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Elimination of all forms of religious intolerance

Note by the Secretary-General**

The Secretary-General has the honour to transmit to the members of the General Assembly the interim report of the Special Rapporteur on freedom of religion or belief, Asma Jahangir, submitted in accordance with General Assembly resolution 60/166.

* A/61/150.
** The present report is being submitted after the deadline so as to include as much updated information as possible.

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Report of the Special Rapporteur on freedom of religion or belief

Summary

The Special Rapporteur submits the present report to the General Assembly pursuant to its resolution 60/166.

The report sets out the activities carried out under the mandate since the submission of her previous report to the General Assembly (A/60/399), including country visits, communications and other activities.

The report also presents an analysis of recent patterns and trends relevant to the mandate and sets out a number of conclusions and recommendations.

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I. Introduction

1. The mandate of the Special Rapporteur on freedom of religion or belief was created by Commission on Human Rights resolution 1986/20, to examine and make recommendations regarding incidents and governmental actions in all parts of the world inconsistent with the provisions of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief. Since then 20 reports have been submitted to the Commission and 11 reports have been submitted to the General Assembly, together with a total of 22 addenda. The present report is submitted in accordance with General Assembly resolution 60/166.

2. The present Special Rapporteur was appointed by the Chairperson of the Commission on Human Rights in July 2004. She has submitted two general reports to the General Assembly (A/59/366 and A/60/399) and two reports to the Commission on Human Rights (E.CN/4/2005/61 and Corr.1 and Add.1 and 2 and E.CN/4/2006/5 and Add.1-4).

3. Since her appointment, the Special Rapporteur has undertaken in situ visits to Nigeria (27 February-7 March 2005, E/CN.4/2006/5/Add.2), Sri Lanka (2-12 May 2005, E/CN.4/2006/5/Add.3), France (18-29 September 2005, E/CN.4/2006/5/Add.4), Azerbaijan (26 February-5 March 2006, report to be submitted to the Human Rights Council) and the Maldives (6-9 August 2006, report to be submitted to the Human Rights Council). In addition, the Special Rapporteur, together with the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, the Special Rapporteur on the independence of judges and lawyers, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, submitted a report on the applicability of international human rights law to the persons held at the detention facilities in Guantánamo Bay, Cuba, as well as the human rights situation of the detainees (E/CN.4/2006/120). This report was submitted after failed attempts to carry out a visit to Guantánamo Bay according to the terms of reference for fact-finding missions by special procedures.

4. The Special Rapporteur has also submitted two reports on communications sent to, and replies received from, Governments (E.CN/4/2005/61/Add.1 and E.CN/4/2006/5/Add.1) further to individual complaints and other reports of cases and situations raising concern in terms of the mandate. The Special Rapporteur considers that the mechanism of communications is important to victims and also provides a continued link between the mandate and Member States.

5. By decision 7/107, the Human Rights Council requested the Special Rapporteur, as well as the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance and the United Nations High Commissioner for Human Rights, to report at its next session on the question of the increasing trend of defamation of religions and incitement to racial and religious hatred and its recent manifestations, ... in particular its implications for article 20, paragraph 2, of the International Covenant on Civil and Political Rights.

6. In addition to her regular country visits, the Special Rapporteur travelled to the Vatican on 15 and 16 June where she held consultations with representatives of the Holy See. She was also invited in her official capacity to a number of dialogues, consultations, seminars and workshops organized on the issue of freedom of religion

or belief. She was encouraged by the number of initiatives undertaken by the United Nations and governmental and non-governmental bodies to promote religious tolerance at the national and global levels. Among others, she attended events in Spain, the United Kingdom of Great Britain and Northern Ireland and Norway, which are discussed in more detail below. She also participated in the annual meeting of special rapporteurs/representatives, independent experts and chairpersons of working groups of the special procedures held in Geneva in June.

7. Throughout the year the Special Rapporteur also met with religious and other groups and communities, as well as non-governmental organizations (NGOs). Meetings and regular contacts of this nature are essential to the effective functioning of the mandate. The Special Rapporteur also makes special efforts to hold consultations with mainstream human rights NGOs so that they remain encouraged to address questions of religious freedom.

8. This year marks the twenty-fifth anniversary of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief. While contentious religious issues have probably not diminished over the past 25 years, it is evident that they have taken other forms, and that a global examination of the situation is necessary to assess the current status of the implementation of the provisions of the Declaration.

9. It is pertinent to emphasize that while the mandate on freedom of religion or belief observes methods of work that are similar to those of other mandates, it has to keep a flexible approach to enable it to identify acts or situations which may not be in direct violation of the formal provisions of the International Covenant on Civil and Political Rights or the 1981 Declaration, but may raise concerns of potential future human rights abuses. While the transmission of early warnings is critical, the Special Rapporteur must first carefully assess both the negative and positive reactions that could follow, and decide whether to make early warnings public.

10. The issue of freedom of religion or belief is complex and delicate and as a result, the tools for dealing with the issue have to be sufficiently sophisticated. Governmental responses in situations of religious tension or controversy have to be measured, balanced and prompt. This is a tough challenge for all Governments, and the Special Rapporteur has deep admiration for those Governments that are making a sincere effort to promote religious tolerance not only within their own national context, but also at the regional and global levels. The mandate on freedom of religion or belief is challenging in many respects and it is notable that there is often a tendency to view freedom of religion or belief in a narrow sense. However, it is essential to ensure that the right to freedom of religion or belief adds to the values of human rights and does not unintentionally become an instrument for undermining freedoms. The Special Rapporteur remains vigilant with regard to these aspects of the mandate.

11. In this report, the Special Rapporteur sets out the activities that have been carried out under the mandate since her last report to the General Assembly, gives an analysis of some patterns and trends that she has identified through these activities and sets out a number of conclusions and recommendations.

II. Activities of the mandate

A. Communications

12. In the period preceding the submission of the present report, the Special Rapporteur has continued to send communications to Governments on cases and situations that raise concerns in terms of freedom of religion or belief.

13. The Special Rapporteur receives a large number of reports and individual complaints about alleged violations of the right to freedom of religion or belief. In this respect, while all reports or complaints do not become the subject of formal communications to Governments, they are compiled to enable a broader assessment of tendencies and patterns on which she can elaborate in her various general reports. The information she receives also enables her to closely monitor ongoing situations to allow her to intervene at the most appropriate moment.

14. From 1 July 2005 until 30 June 2006, the Special Rapporteur sent a total of 92 communications.

B. Country visits

15. The Special Rapporteur would like to thank all those Governments that have invited her to carry out a country visit. She has experienced a very satisfactory level of cooperation from the Governments of those countries she has visited. In this regard, she was particularly impressed by the exceptional level of cooperation extended by the Government of Azerbaijan.

16. Special procedures mandate holders can rarely freely select the countries to visit. It is often the case that countries of particular concern for certain mandates remain closed to them. There is also some informal understanding between mandate holders to streamline their visits and requests according to the priority of concerns in a particular country. For this reason, the Special Rapporteur has not always been able to maintain a regional balance among the countries she has visited.

17. Moreover, she notes with satisfaction that, despite the vibrant civil society that exists in Latin American countries, only a few reports on situations or cases that raise a concern for her mandate come from this region. While no country is spared problems of religious intolerance, there are regional and subregional variations in the intensity of the problem.

18. Country visits are crucial to the activities of the mandate and serve many purposes. In addition to providing immediate support to victims and human rights defenders, the monitoring aspects of the mandate are best served through first-hand interaction, which is an essential aspect of country visits. Any country mission enhances the expertise of the mandate holder. The diversity of experiences in this regard allows for better analysis and enables the mandate holder to identify best practices and effective policies and to think creatively while remaining practical in drawing conclusions and making recommendations.

19. The country visits throw light on the various patterns of human rights concerns for the mandate. They also challenge the Special Rapporteur to identify the root causes of the problems and, as a result, to make recommendations that will prove to be effective.

20. In the period under review, the Special Rapporteur has carried out country visits to Azerbaijan and the Maldives.

I. Visit to Azerbaijan

21. From 26 February to 5 March 2006, the Special Rapporteur visited Azerbaijan at her request and at the invitation of the Government, with a view to assessing the situation in light of reports of limitations on the right to freedom of religion or belief and reports of the persecution of certain religious groups. She takes this opportunity once again to express her gratitude for the extremely good cooperation that the Government of Azerbaijan extended to her.

22. Her report on the visit will be submitted to the next session of the Human Rights Council and will soon be made public on the website of the Office of the High Commissioner for Human Rights (www.ohchr.ch).

23. During and after her visit, the Special Rapporteur emphasized that one of the most striking features of Azerbaijan regarding issues relevant to her mandate was the easygoing and dispassionate attitude shown by the Azerbaijanis towards religion. The main consequence of this attitude is an indisputable degree of tolerance among the population in general, which certainly constitutes an essential ingredient of the freedom of religion or belief in a society.

24. The Government generally respects freedom of religion or belief, but this respect is not uniformly observed in all regions of Azerbaijan. The Special Rapporteur indeed noticed that, in some cases, the concerned authorities may have blurred the thin line that distinguishes facilitation of religious freedoms from control. In particular, certain situations related to the different aspects of this control have resulted in actual limitations of the right to freedom of religion of religious communities: difficulties in registration, restriction on religious literature and methods of appointing clergy, or obstacles for non-registered religious communities.

25. In a few cases, this control has unfortunately become forms of real repression. In this regard, the Special Rapporteur urges the Government to rapidly take the appropriate measures so that such incidents do not recur. She was also particularly concerned that, out of fear, some religious communities expressed reluctance to meet with her.

26. Moreover, while maintaining her opinion about the general tolerance in the society, the Special Rapporteur was sad to note that tolerance between religious communities was sometimes significantly challenged. This is the result, inter alia, of the actions carried out by the relevant governmental bodies and of the negative role played by some media in stigmatizing certain religious communities. In this respect, she would like to stress the responsibility of the media and draw attention to the relevant provisions of international law that prohibit any form of incitement to religious hatred, such as article 20 of the International Covenant on Civil and Political Rights.

27. The existence of effective independent and impartial administrative and judicial mechanisms is of crucial importance to address these as well as other related human rights concerns. While she is aware of the difficulties that Azerbaijan has faced during this transition period, the Special Rapporteur strongly encourages the Government, as well as the other actors in the society, to work towards

strengthening the institutions that are essential for the construction of a democratic society.

28. Despite these concerns, the Special Rapporteur is convinced that Azerbaijan can play a leading role in building a model of its own, because it has the most valuable resource available for achieving this purpose: the good will of its people and their willingness to accommodate different spiritual beliefs.

2. Visit to the Maldives

29. From 6 to 9 August 2006, the Special Rapporteur visited the Maldives, at her request and at the invitation of the Government, with a view to assessing the situation of freedom of religion in the country.

30. She takes this opportunity to thank the Government of the Maldives for having invited her to carry out this mission and extended its full cooperation.

31. The Special Rapporteur was greatly impressed by the desire of the people of this country to maintain peace and harmony within their society. She welcomed the adoption, at the time of her visit, of the Law on the Human Rights Commission. However, she noted that it did not completely satisfy the requirements of the Paris Principles, and that to unduly stress that members of the Human Rights Commission must be Muslim defeats the very spirit of seeking to uphold human rights.

32. Maldivians are eagerly looking forward to, and preparing to embrace, the political changes in the country, yet open and honest discourse on the question of freedom of religion or belief is vigorously denied and the few who dare to raise their voices are denounced and threatened. In this regard, the Special Rapporteur wishes to emphasize that any reform in the field of human rights has to go hand in hand with freedom of expression and association, independence of the judiciary, and the mainstreaming of freedom of religion and belief.

33. In her report to the Human Rights Council, she will be recommending the introduction of religiously sensitive rules in places of detention, concerning, for example, respect for the spiritual and dietary needs of foreign prisoners. Indeed, the situation in places of detention tends to reflect the situation in the society as a whole, and in this regard, the Maldives is no exception.

34. On another level, the spirit of peaceful coexistence and harmony is an encouraging trait of the country. It will enable the process of reform and can open up new areas of discussion that have so far remain untouched.

C. Other activities

Participation in conferences and meetings

35. On 15 February 2006, the Special Rapporteur participated in a conference in Madrid, entitled "Challenges to Tolerance in a Multicultural Society", which was co-organized by the Government of the Netherlands and Helsinki España. At this conference, she had the opportunity to interact with, among others, Ambassador Ömür Orhun, the Personal Representative of the Chairman-in-Office of the Organization for Security and Cooperation in Europe (OSCE) on combating intolerance and discrimination against Muslims. On 2 and 3 May 2006, the Special Rapporteur participated in a conference entitled, "Challenging stereotypes in Europe

and the Islamic World: working together for constructive policies and partnerships" at Wilton Park, United Kingdom. The conference was jointly organized with the Organization of the Islamic Conference whose Secretary-General was also present. These conferences provided opportunities to raise important issues of religious intolerance and to develop certain aspects of the mandate that are issues of general concern for the society as a whole.

36. On 24 August 2006, the Special Rapporteur participated in the inauguration of the Center for Studies of Holocaust and Religious Minorities in Oslo.

Consultations with the Holy See

37. For the first time since she was appointed, the Special Rapporteur held consultations with representatives of the Catholic Church. On 15 and 16 June 2006, she travelled to the Vatican and had different meetings at the official level with representatives of the Holy See as well as a number of informal meetings with representatives of organizations and institutions and with other individuals who deal with questions related to the Catholic community.

38. At the Vatican, the Special Rapporteur met with Archbishop Lajolo, Secretary for Relations with States, Mgr. Parolin, Under-Secretary, and other representatives of the Secretariat of State of the Vatican; Cardinal Poupard, in charge of the question of interreligious dialogue; and Cardinal Kasper, in charge of cultural affairs and relations with the Jewish community. She also met with representatives of the Pontifical Council for Justice and Peace; Gusto Lacunza-Balda, Director of the Pontifical Institute for Arabic and Islamic Studies; Duncan MacLaren, Secretary-General of Caritas Internationalis; and representatives of different diplomatic missions accredited to the Holy See. The Special Rapporteur would like to express her gratitude to the Holy See for having facilitated the organization of the meetings and for the fruitful discussions she held with her interlocutors.

39. In holding these consultations, the intent of the Special Rapporteur was to initiate a dialogue with representatives of the Catholic community and to identify issues on which the Catholic Church could increase its cooperation with the mandate. In this regard, the Special Rapporteur noted that the Holy See was closely following a number of issues of concern for the mandate.

40. She considers that some of the main issues of concern to the mandate are related to the coexistence in many parts of the world and globally of different religions or different religious communities. These issues include the propagation of religion, including the sensitive question of proselytism, the relationship between freedom of expression and religion (to which she devotes a section in the present report) and the emergence of new religious groups or communities of belief.

41. The need for interreligious dialogue at all levels is of crucial importance to resolving disputes that can arise as a result of this coexistence. In particular, interreligious dialogue should be aimed primarily at the promotion of human rights, including the right to freedom of religion or belief. Human rights, indeed, constitute principles that are beneficial to all religious communities and are therefore an appropriate basis for discussion as well as for defusing tensions and conflicts based on religion.

42. In the near future, the Special Rapporteur hopes to organize similar consultations with representatives of other major religious communities across the

world in order to explore ways to address the main forms of religious intolerance and try to find common ground on which interreligious dialogue could be further strengthened, with the support of the mandate and on the basis of human rights principles.

Twenty-fifth anniversary of the Declaration

43. In her previous report to the General Assembly, the Special Rapporteur drew attention to the twenty-fifth anniversary of the adoption in 1981 of the Declaration on the Elimination of Intolerance and Discrimination Based on Religion or Belief, which will take place on 25 November 2006. She would like once again to encourage Governments and NGOs to take advantage of this occasion to organize events that will highlight the importance of promoting freedom of religion or belief and religious tolerance. The Special Rapporteur is aware that many such events will be taking place in the next few months and sees this as an important reminder of the governmental consensus that led to the adoption of this important Declaration.

44. The international commemoration of this anniversary is being held in Prague. This event is being funded by the Ministry for Foreign Affairs of the Netherlands and will be attended by the Deputy United Nations High Commissioner for Human Rights, representatives of the Netherlands and other Governments, representatives of religions and beliefs and other members of civil society as well as by the Special Rapporteur. The programme of the day will include workshops on key thematic areas that continue to challenge the realization of the Declaration's principles: Protection of religion or belief vis-à-vis freedom of expression; Change of religion or belief — enabling the environment; Protection of religion or belief — Who benefits?; and Propagation of religion or belief. The programme will conclude with a reaffirmation of the norms protected in the Declaration.

45. The Special Rapporteur encourages Governments, international organizations, religious or belief communities and other civil society organizations to visit the website of this commemorative occasion (www.1981Declaration.org) and to support it.

III. Patterns and trends in freedom of religion or belief

46. While the situation worldwide has not changed dramatically, the Special Rapporteur is in a position to identify several new developments as well as persisting patterns in the context of the activities of the mandate and, in particular, the communications.

47. The Special Rapporteur notes that people of all religions and all religious communities are victims of religious intolerance. In the same context, the perpetrators of acts of religious intolerance, whether Governments or non-State actors, often use religion to justify their actions. The Special Rapporteur notes that religious motivations can often be at the origin of religious intolerance.

48. For these reasons, the Special Rapporteur does not wish to single out one or several religious groups, and cannot re-emphasize enough that no country is spared religious intolerance and that all Governments need to address more actively issues of religious intolerance in a world that is becoming increasingly globalized.

A. Religious minorities

49. Religious minorities remain, by and large, the main victims of violations of the right of freedom of religion or belief and other acts of religious intolerance. In this respect, one must take into account that while a certain religion may be a minority in one part of the world and suffer accordingly, it may constitute the religion of the majority of the population in another part of the world.

50. The problems related to the existence of religious minorities remain as important as ever and the rules pertaining to the principles of freedom of religion or belief have to be constantly re-emphasized. In addition to lack of respect, ignorance of these principles is often at the source of violations. The Special Rapporteur insists on the need to strengthen technical cooperation in order to train governmental officials in several parts of the world in the principles related to her mandate.

51. Moreover, when religious minorities are groups that follow a so-called non-traditional or newer religion, the members of these communities may be the object of suspicion and, consequently, suffer greater limitations to their right to freedom of religion or belief.

B. Registration and restrictions on freedom of information on religion or belief

52. In her first report to the Commission on Human Rights (E/CN.4/2005/61, paras. 55-58), the Special Rapporteur addressed the question of registration. The reluctance on the part of Governments to officially register certain religious groups or communities of belief is due to a number of factors. In many countries, there is a deep mistrust of so-called non-traditional religions. In these cases, the main or more traditional religious communities often put pressure on the Government to restrict the freedoms of non-traditional religious communities. In other cases, the Government itself actively denies registration to certain religious communities, in particular religious minorities. During country visits, representatives of many Governments have indicated that rising religious extremism was increasingly a cause of concern to them. Some Governments have resorted to measures that place registration of religious communities in the hands of regulatory bodies that apply the law in a rigid and narrow manner, often going beyond it.

53. Moreover, the Special Rapporteur recalls that registration should not be a precondition for practising one's religion, but only for the acquisition of a legal personality and related benefits. Moreover, the requirements for registration should comply with the minimum safeguards that the Special Rapporteur referred to in her 2005 report to the Commission on Human Rights (ibid.).

54. In certain cases, very tight control is exercised by the authorities on the content of religious literature. In this respect, the authorities should demonstrate that their scrutiny of religious books is necessary to protect public safety, order, health, or morals and that they exercise this control in a reasonable manner. Moreover, the Special Rapporteur believes that the right to freedom of expression as protected by international standards provides a certain latitude for religious communities in the drafting and dissemination of their literature, even in cases where they do not agree

with other religions, provided that such literature does not constitute incitement to religious hatred, as prohibited by article 20 of ICCPR.

C. Conversion and propagation of religion

55. Since her appointment, the Special Rapporteur has noted that problems related to religious conversion and the propagation of religion, often referred to as proselytism, have increased significantly worldwide. In different regions of the world, States have adopted, or are considering, legislation that would either limit the possibility of converting from one religion to another or criminalize certain acts that would encourage such conversion. Moreover, religious communities have put obstacles in the way of their members who wish to convert to other religions and have reacted negatively, often with violence, to religious propagation carried out by other religious groups. The Special Rapporteur addressed this question extensively in her previous report to the General Assembly (A/60/399, paras. 40-68) and wishes to re-emphasize that conversion is an essential part of the right to freedom of religion. She also emphasizes the danger of criminalizing certain acts that fall within the different aspects of the right to manifest one's religion, as has been developed, inter alia, by the Human Rights Committee in its general comment No. 22 (1993).

56. Many religious communities argue that missionary activities for the purpose of seeking converts is central to their belief. However, for different reasons, including historical or cultural ones, some religious communities conduct only limited activities in terms of propagating their religion while others are far more active and give priority to this aspect of their religious duties. Some so-called non-traditional religious groups have also been accused of using aggressive or "unethical" forms of proselytism.

57. In principle, all religious groups and communities of belief agree that individuals have a right to change their religion and to propagate it. At the same time while all religious communities fully accept converts to their religion, not all are either willing or comfortable with their members converting to another religion.

58. The example of Sri Lanka, where a number of draft legislative bills had been introduced either with the aim of prohibiting conversion or criminalizing certain forms of so-called unethical conversion, illustrates the controversies surrounding some forms of conversions. Eventually, the Government, religious leaders, politicians and the civil society were able to negotiate and come to a compromise in order to resolve the issue. However, this unique example was made possible in part because the country is rich in democratic traditions. In a society where open or honest discourse is denied or threatened, resolving issues of faith and belief is far harder. For this reason, issues of freedom of religion or belief are, to a certain extent, linked to the level of democracy of a society.

59. With respect to the concerns raised by the adoption of legislation prohibiting certain forms of conversion, one has to emphasize that it is very difficult to assess the genuineness of a religious conversion. This difficulty is essentially due to the fact that this is a question of conscience, and the freedom of conscience cannot be controlled objectively. While it may be easy to prove that a person has received a gift or was moved by another form of inducement, it will not be easy to prove that that person has converted because of the gift. Under international law, freedom of

conscience is absolute and cannot suffer any limitation. A mechanism designed to monitor conversions and thus the reasons and purposes behind them could in this way constitute a limitation on freedom of conscience.

60. The wording of such legislation is also often too vague. In many cases, legislation allows a wide margin of interpretation, which is the source of possible abuse and could potentially transform such laws into tools of persecution by those who do profess religious intolerance. The Special Rapporteur is concerned that the adoption of such legislation would provide legitimacy to those who want to promote religious intolerance and hatred vis-à-vis certain religious groups.

61. Legislation may not always be the appropriate response, in particular in circumstances involving matters of faith. While legislation can be easily resorted to, it can sometimes be counterproductive to do so. Cooperation with interreligious bodies and education programmes on religious tolerance and public awareness campaigns for the promotion of tolerance can have the advantage of promoting an interreligious dialogue, which is the best way to resolve tensions between religious communities.

D. Religious symbols

62. The question of religious symbols is still widely discussed in many countries. In the last few years, discussions have mainly focused on the Islamic headscarf and whether women should be allowed to wear them in public places and, in particular, if the girl child should be permitted to wear the headscarf in public schools. In this regard, the Special Rapporteur carried out a visit to France in September 2005 (see E/CN.4/2006/5/Add.4). In her conclusions, the Special Rappporteur noted that the French legislation, which is applicable to symbols of all religions, mainly affected certain religious minorities and, notably, people of a Muslim background. She considered that the law was appropriate insofar as it is intended, in accordance with the principle of the best interests of the child, to protect the autonomy of minors who may be pressured or forced to wear a headscarf or other religious symbols. However, the law denies the right of those minors who have freely chosen to wear a religious symbol to school as part of their religious belief to do so.

63. The Special Rapporteur also wishes to emphasize that legislation which imposes dress codes on women or men on religious grounds is also in clear violation of the right to freedom of religion or belief and the principle of the 1981 Declaration.

E. Counter-terrorism and freedom of religion or belief

64. The Special Rapporteur has underlined on numerous occasions that measures adopted by Governments in countering terrorism have significantly affected the right to freedom of religion or belief of numerous religious groups around the world. On many occasions, members of groups that have been perceived as having extreme religious views have been harassed, arrested and, on some occasions, deported. The Special Rapporteur has received many reports that preaching in mosques was controlled by State authorities and the nomination of imams strictly regulated.

65. In the report that she submitted jointly with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on the independence of judges and lawyers, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, and the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health on the situation of detainees at Guantánamo Bay, the Special Rapporteur noted that there were "concerns about reports that the United States Government has, either implicitly or explicitly, encouraged or tolerated the association between Islam and terrorism, for example, by interrogating detainees on the extent of their faith in Islamic teachings" (E/CN.4/2006/120, para. 65).

66. In the conclusions of his last report to the Commission on Human Rights, the Special Rapporteur's predecessor highlighted that "[t]he fight against terrorism sometimes ends up inserting freedom of religion or belief itself into the equation, as a result of the excesses it has encouraged in certain regions and by the blacklisting of entire communities and religions which are subjected to systematic suspicion and are discredited. [He expressed] the hope that, in their fight against terrorism, States will not mistake their target and, while continuing to combat terrorist acts, they will refocus their efforts on the origins of terrorism and on the need to ensure protection and promotion of human rights without bias or selectivity" (E/CN.4/2004/63, para. 153).

F. Right to freedom of religion or belief of persons deprived of their liberty

67. Since her appointment, the Special Rapporteur has paid special attention to the right to freedom of religion or belief of persons deprived of their liberty, in particular in the context of her country visits. In her previous report to the General Assembly, she developed rules and principles to be applied in these situations.

68. In the report on the situation of detainees at Guantánamo Bay, the Special Rapporteur expressed concerns at reports of possible mishandling of religious objects, such as the Holy Koran. As a result of their investigations, the Government indicated in its detailed and comprehensive reply that it had identified five confirmed cases of mishandling of the Holy Koran by guards and interrogators, either intentionally or unintentionally, including kicking and stepping on the Holy Koran.

G. Religion and the right to freedom of expression

69. The Special Rapporteur has also noted increased attention to the relationship between religion and human rights, and particularly freedom of expression. In this regard, she would like to draw attention to the report to be submitted to the Human Rights Council at its next session by the Special Rapporteur on freedom of religion or belief and the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance were finalizing a joint report (A/HRC/2/3). This report will be submitted pursuant to Council decision 1/107, in which the Council requested the Special Rapporteur, as well as the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance and the High Commissioner, to submit a report on the question of

defamation of religion and incitement to religious hatred, in particular its implications for article 20, paragraph 2, of the International Covenant on Civil and Political Rights.

IV. Conclusions and recommendations

Awareness and transparency

70. **The right to freedom of religion or belief continues to be significantly challenged in many contexts and different parts of the world. One of the reasons for this is a lack of awareness about the right to freedom of religion or belief and, indeed, about the different aspects of this right, both among governmental officials and ordinary citizens. The Special Rapporteur would therefore like to encourage Governments to cooperate with relevant international and regional organizations to carry out training and awareness-raising activities on the various elements, and parameters, of the right to freedom of religion or belief. Such training and awareness-raising programmes should not only be directed towards relevant government departments, but also towards the society as a whole.**

71. **In this regard, it is apparent that the relatively low level of awareness about the right to freedom of religion or belief in some countries is further compounded by a lack of transparency concerning the national legal and policy frameworks governing the various elements of the right to freedom of religion or belief. Accordingly, the Special Rapporteur would like to emphasize the importance of ensuring general openness and transparency about legal and policy frameworks relevant to this issue.**

72. **The Special Rapporteur considers that an important element of her work, and the work of the special procedures as a whole, is to raise awareness about issues relevant to their mandates. In addition to this more general awareness-raising role, she also considers that the special procedures have an important function as an early warning mechanism, and in this regard she considers that channels should be created through which information can be effectively and efficiently passed to decision makers in the international community.**

Religious intolerance

73. **As a result of activities carried out under her mandate, the Special Rapporteur has observed a marked increase in the level of religious intolerance in many regions of the world. Accordingly, she considers that it would be both timely and appropriate for the international community, under the auspices of the United Nations, to develop a common global strategy to deal with rising religious intolerance. Within this global strategy, it would also be necessary to develop regional and subregional approaches in order to be able to respond effectively to those aspects of the issue that are specific to particular regional contexts. In this regard, she encourages the United Nations to consider carrying out regional consultations to identify the trends and patterns of religious intolerance present in each particular region and develop policy frameworks for approaching and responding to such issues. Such consultations would also**

be useful in identifying regional experts on the topics of religious intolerance and freedom of religion or belief.

74. The Special Rapporteur also takes this opportunity to note that even in those countries where there is currently a high level of tolerance for different communities of religion or belief, including the beliefs of religious minorities, there is a need to remain vigilant, and active steps should be taken to maintain high levels of tolerance. In particular, she notes that in this increasingly globalized world, an increase in intolerance in one part of the world can have an impact on the level of religious tolerance in other parts of the world.

The interrelated nature of freedom of religion or belief and other human rights

75. While freedom of religion or belief forms an integral part of the entire range of human rights, the Special Rapporteur notes that the issues arising under her mandate have particularly close links to freedom of association, independence of the judiciary and freedom of expression. With regard to freedom of expression, the Special Rapporteur calls in particular upon the independent media to provide space to represent the views of religious minorities and allow them to respond to allegations made against them in the press.

76. The Special Rapporteur notes that the right to disseminate or propagate one's religion in a peaceful fashion is an important element of freedom of religion or belief and is also supported by the right to freedom of expression. In this regard, the Special Rapporteur considers it appropriate to reiterate a recommendation she has made previously, namely that interreligious communities should give serious consideration to developing an agreed code of ethics in the pursuit of their missionary work.

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Item 65 of the provisional agenda*
Right of peoples to self-determination

Use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination

Note by the Secretary-General**

The Secretary-General has the honour to transmit to the members of the General Assembly, in accordance with Economic and Social Council decision 2005/255 and Commission on Human Rights resolution 2005/2, the report of the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination.

* A/61/150.

** The present document was submitted late so as to include the maximum number of replies from Governments.

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Report of the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination

Summary

The Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the rights of peoples to self-determination was established in July 2005 pursuant to Commission on Human Rights resolution 2005/2.

The Working Group is composed of Najat Al-Hajjaji (Libyan Arab Jamahiriya), Amada Benavides (Colombia), Jose Luis Gomez del Prado (Spain), Alexander Nikitin (Russian Federation) and Shaista Shameem (Fiji). The Chairperson Rapporteur is Ms. Benavides.

The present report is presented in accordance with the terms of that resolution, in which the Commission on Human Rights requested the Working Group to report annually on the progress made in the fulfilment of its mandate to the Commission and to the General Assembly.

Section II of the report is devoted to the methods of work adopted by the Working Group at its first session. The Working Group also gives an overview of the activities it has been undertaken since its creation, notably the consultations held at governmental, intergovernmental and non-governmental levels, the meetings Working Group members have been invited to participate in, as well as the field missions requested or under way (sect. III).

The Working Group presents an analysis of the responses received to the questionnaire on its mandate and activities sent in November 2005 to Member States as well as to international organizations and non-governmental organizations (sect. IV).

In accordance with the request made by the Commission, the Working Group devotes the other parts of its report to studying: the effects of the activities of private companies offering military assistance, consultancy and security services on the international market on the enjoyment of human rights (sect. V); mercenaries and mercenary-related activities in different parts of the world (sect. VI); and international and national legislation on the issue of mercenarism (sect. VII). The final section describes the activities foreseen by the Working Group for the future.

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I. Introduction

1. At its sixty-first session, the Commission on Human Rights decided, in resolution 2005/2 of 7 April 2005, to establish a working group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination, made up of five independent experts, one from each regional group, for a period of three years, the Working Group on Mercenaries succeeds the mandate of the Special Rapporteur, which had been in existence since 1987. Enrique Bernales Ballesteros (Peru) was Special Rapporteur from 1987 to 2004 and Shaista Shameen (Fiji) from 2004 to 2005.

2. The Working Group is composed of Najat Al-Hajjaji (Libyan Arab Jamahiriya), Amada Benavides (Colombia), José Luis Gómez del Prado (Spain), Alexander Nikitin (Russian Federation) and Shaista Shameem (Fiji).

3. The Working Group held its first session in Geneva from 10 to 14 October 2005 (see E/CN.4/2006/11) and from 13 to 17 February 2006 (see E/CN.4/2006/11/Add.1). Ms. Benavides was elected Chairperson-Rapporteur. The members decided to leave the Vice-Chairpersonship open, to be decided as needed on a case-by-case basis.

4. In paragraph 12 of its resolution the Commission requested the Working Group:

(a) To elaborate and present concrete proposals on possible new standards, general guidelines or basic principles encouraging the further protection of human rights, in particular the right of peoples to self-determination, while facing current and emergent threats posed by mercenaries or mercenary-related activities;

(b) To seek opinions and contributions from Governments and intergovernmental and non-governmental organizations on questions relating to its mandate;

(c) To monitor mercenaries and mercenary-related activities in all their forms and manifestations in different parts of the world;

(d) To study and identify emerging issues, manifestations and trends regarding mercenaries or mercenary-related activities and their impact on human rights, particularly on the right of peoples to self-determination;

(e) To monitor and study the effects of the activities of private companies offering military assistance, consultancy and security services on the international market on the enjoyment of human rights, particularly the right of peoples to self-determination, and to prepare draft international basic principles that encourage respect for human rights on the part of those companies in their activities.

5. The Commission further requested the Working Group to continue the work already done by the previous Special Rapporteurs on the strengthening of the international legal framework for the prevention and sanction of the recruitment, use, financing and training of mercenaries, taking into account the proposal for a new legal definition of a mercenary drafted by Mr. Ballesteros (E/CN.4/2004/15, para. 47); to report annually on the progress made in the fulfilment of its mandate to the Commission and to the General Assembly; to take into account, in the discharge of its mandate, that mercenary activities are continuing to occur in many parts of the world and are taking on new forms, manifestations and modalities and, in this

regard, to pay particular attention to the impact of the activities of private companies offering military assistance, consultancy and security services on the international market on the enjoyment of human rights by everyone and every people and, in particular, on the exercise of the right of peoples to self-determination.

6. Accordingly, and pursuant to this resolution, the Working Group submits the present report to the General Assembly for consideration at its sixty-first session.

II. Methods of work

7. At its first session, the Working Group discussed and adopted a document outlining its methods of work. Those methods take account of the specific features of the mandate of the Working Group on Mercenaries under Commission resolution 2005/2.

A. Functioning of the Working Group

8. Also at its first session, the members of the Working Group decided to elect the Chairperson-Rapporteur for one year, at its October session, taking due account of the need for rotation among the geographical regions.

9. When it is determined that a country situation requires a visit, and following an invitation from the Government concerned, the Working Group may conduct such a visit.

10. During the course of its deliberations, when dealing with individual cases or situations, the Working Group will render opinions which will be incorporated in its reports to the Human Rights Council and the General Assembly.

B. Implementation of the mandate of the Group

11. One of the elements of the mandate of the Group is to study, identify and monitor current and emerging issues, manifestations and trends of mercenaries, mercenary-related activities and activities of private military and private security companies which have an impact on human rights in general, including the right of peoples to self-determination. In the discharge of its mandate, the Working Group is guided by the relevant international standards set forth in the Universal Declaration of Human Rights and the relevant international instruments, in particular the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, the Norms on the responsibilities of transnational corporations and other business enterprises with regard to human rights (E/CN.4/Sub.2/2003/12/Rev.2) as well as, when appropriate, the standards contained in the International Convention against the Recruitment, Use, Financing and Training of Mercenaries; the Geneva Conventions of 1949 and the Additional Protocols thereto; the Declaration of Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, the Convention for the Elimination of Mercenarism in Africa of the Organization of African Unity (OAU), the Commonwealth of Independent States (CIS) Model Law "On Counteracting Mercenarism", as well as other relevant

instruments such as the Code of Conduct for Law Enforcement Officials and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

12. Within the terms of its mandate and in order to encourage further protection of human rights against current and emergent threats from mercenaries, mercenary-related activities and activities of private military and security companies, the Working Group will endeavour to elaborate concrete proposals and advisory opinions on possible new standards, general guidelines or basic principles. In addition, as requested by the Commission, the Working Group will continue the work undertaken by the previous Special Rapporteurs on the strengthening of the international legal framework for the prevention and sanction of the recruitment, use, financing and training of mercenaries, taking into account the proposal for a new legal definition of mercenary. The Working Group will also compile, analyse, publish and disseminate national, regional and international legislation on mercenarism and related activities. It will also look into the possibility of utilizing the Internet for public accessibility of these materials.

13. The Working Group will identify and prepare studies on emerging issues, manifestations and trends regarding mercenaries, mercenary-related activities and activities of private military and security companies.

14. As a general rule, within the meaning of resolution 2005/2, the Working Group will examine situations where mercenaries, mercenary-related activities and non-State actors, including private military and private security companies, impede the enjoyment of human rights or interfere with the self-determination of peoples and the constitutional and social order of States, either as part of security measures, or in armed conflict or in any other situation. The Working Group will also examine, as a special category, situations where children are used as mercenaries or involved in mercenary-related activities.

15. The Working Group will formally, and members of the Working Group will informally seek the opinions of and contributions from, and engage in consultations with Governments, relevant State organs, and intergovernmental and non-governmental organizations, as well as non-State actors, academic institutions and individuals.

C. Submission of communications to the Working Group and consideration of the communications

1. Submission of communications to the Working Group

16. Individual communications shall be submitted in writing and addressed to the Secretariat, giving the family name, first name and address of the sender and, if desired, his/her telephone and/or fax numbers, or any other acceptable means of contact, as well as any other information making it possible to identify the person, as well as his/her legal status. As far as possible, each case shall be presented separately. In order to facilitate the Group's work, it is hoped that communications will be submitted using the model questionnaire available from the Working Group's secretariat.

17. Communications may be addressed to the Working Group by a State, State organ, intergovernmental and non-governmental organization (NGO), or the individuals concerned, their families or their representatives, or any other relevant source.

18. In the interest of ensuring mutual cooperation, communications shall be brought to the attention of the Government concerned and its reply shall be brought to the attention of the source of the communication for its further comments. Those shall be transmitted by the Chairperson of the Group or, if he/she is not available, by the member designated by the Chairperson. In the case of Governments, the letter shall be transmitted through the Permanent Representative to the United Nations Office at Geneva. It shall request the Government to reply within 60 days after having carried out such inquiries as may be appropriate so as to furnish the Group with the fullest possible information.

2. Action taken on communications

19. In the light of the information obtained, the Working Group will take the appropriate action.

20. For those cases where private military or private security companies are involved, the opinions rendered by the Group shall be transmitted to the Government concerned with a copy, as appropriate, to the company involved. Three weeks after their transmittal to the Government they shall be sent to the source.

21. The opinions rendered by the Group shall be brought to the attention of the Human Rights Council in the report of the Working Group.

22. The Working Group shall take all appropriate measures to ensure that Governments inform it of the follow-up action taken on the recommendations made, thus enabling it to keep the Council informed of the progress made and of any difficulties encountered in implementing the recommendations, as well as of any failure to take action.

D. Urgent action procedure

23. A procedure known as "urgent action" may be used in the following cases:

(a) Where there are sufficiently reliable allegations that human rights violations are being perpetrated by mercenaries, as a result of mercenary-related activity or of activities of private military and security companies;

(b) There are particular circumstances that warrant an urgent action, even when no such threat is alleged to exist.

E. Coordination with other human rights mechanisms

24. Wishing to contribute to strengthening the good coordination that already exists between the various United Nations bodies working in the field of human rights, the Working Group will coordinate with other mechanisms as appropriate.

III. Activities of the Working Group

25. Taking into consideration the challenges that the former Commission on Human Rights has placed on the Working Group and the complex issues it has to confront in carrying out its mandate, the Working Group feels strongly that it should have the possibility of holding three sessions per year.

26. During the first session, the Working Group met with representatives of Member States and intergovernmental and non-governmental organizations. Similar consultations and exchanges of correspondences also took place outside the sessions.

A. Consultations with States

27. The Working Group met with the representatives of the coordinators of the five regional groups to discuss regional and country-specific concerns and to seek their cooperation with the mandate. This included sharing information; encouraging regional group members to ratify the International Convention against the Recruitment, Use, Financing and Training of Mercenaries; and suggesting the adoption, when they do not already exist, of regional and national legislative frameworks. The Working Group emphasized the importance of continued dialogue with States in making progress in addressing mercenarism. It also sought support for a high-level policy round table, under the auspices of the United Nations, to undertake discussion of the fundamental question of the role of the State as holder of the monopoly on the use of force.

28. The Working Group invited States to recommend institutes and researchers with a view to creating an academic network of studies on emerging issues, manifestations and trends regarding mercenaries or mercenary-related activities, and on the effects of the activities of private companies offering military assistance, consultancy and security services on the international market on the enjoyment of human rights, particularly the right of peoples to self-determination.

29. The Working Group encouraged States to submit legislation and regulations relevant to mercenaries, mercenary-related activities and activities of private military and security companies, in order to enable it to continue its work on comparative analysis.

B. Consultations with intergovernmental organizations, United Nations bodies and the International Committee of the Red Cross

30. The Working Group held consultations with the African Union (AU) and met with representatives of the International Committee of the Red Cross (ICRC) and with representatives of the Office of the United Nations High Commissioner for Refugees (UNHCR).

31. During its consultations with AU, the Group requested information on the application of the 1977 Convention for the Elimination of Mercenarism in Africa, and expressed its interest in exploring opportunities for cooperation with AU in the

future. The text of the Commonwealth of Independent States legislation on mercenarism was provided to the AU representative.

32. A representative of UNHCR briefed the Working Group on areas of common concern and possible collaboration. He identified as a significant connection the use of mercenaries in causing displacement. Another area was preventing the recruitment of refugees and other persons of concern to UNHCR as mercenaries. Cooperation with UNHCR was pursued in June 2006 with the head of the UNHCR West Africa Unit. The Working Group members and UNHCR reiterated the need to cooperate closely on the question of recruitment from refugee camps, notably by private military and security companies (PMSCs).

33. On 25 April 2006, the Working Group sent a letter to 22 regional organizations expressing an interest in initiating with them a dialogue and an exchange of views. It received replies from the Organization of American States (OAS), the Organization for Security and Cooperation in Europe (OSCE), the Pacific Island Forum (PIF), the Council of Europe and the Interparliamentary Assembly of the Commonwealth of Independent States, expressing their willingness to cooperate.

34. PIF indicated particular interest in entering into a dialogue on the outsourcing of military activities and the utilization of Pacific Island nationals by private military companies. OSCE specified its readiness to share relevant experience and the vast OSCE field experience to enhance mutual understanding of the phenomenon. The Commonwealth of Independent States Interparliamentary Assembly informed the Group about the Model Law "On Counteracting Mercenarism", adopted on 19 November 2005.

35. By recommendation 1713 (2005), the Parliamentary Assembly of the Council of Europe established ad hoc terms of reference for the Council for Police Matters (PC-PM) relating to the regulation of private security services. The terms of reference indicate that "[a] growing concern in member states is the important increase in the provision and use of private security services, taking a great variety of forms. Recent research estimates that, in the member states of the Council of Europe, the number of staff involved in private security exceeds the number of those employed by the police. From being rather limited in scope and action, private security services are increasingly moving into areas which traditionally have been reserved for the public police. Ensuring security in society through the rule of law is a fundamental mission of public authorities."

36. The Council of Europe also informed the Group that a report on the regulation of private security services would be published by the end of 2006.

C. Consultations with non-governmental organizations

37. The Group met with representatives of Amnesty International, the Quaker United Nations Office, International Service for Human Rights, the Geneva Centre for the Democratic Control of Armed Forces (DCAF), the American Association of Jurists and the International Peace Research Institute. NGOs were invited to submit information on situations and allegations and to provide the Working Group with information about the incidence of NGOs employing private companies in the field of protection, and to assist the Working Group.

D. Consultations with private security companies

38. On 17 July 2006, the Working Group received a letter from the President of the International Peace Operations Association (IPOA), who offered to send a representative of IPOA to the next session of the Working Group. The communication also included the text of a draft code of conduct.

E. Other meetings

39. At its first session, the Working Group met with the United Nations High Commissioner for Human Rights, who sought feedback on the approach to the mandate. The Chairperson identified several issues as areas of focus. The High Commissioner assured the members of the support of her Office in carrying out the mandate. The Working Group also received information from the various departments of the Office of the United Nations High Commissioner for Human Rights (OHCHR).

40. A representative of ICRC informed the Group about the approaches to the question of international humanitarian law, including the definition of mercenaries and the responsibilities of States with respect to PMSCs. In the light of the many concerns raised regarding this definition of mercenary, the Working Group agreed to continue a dialogue with ICRC at each of its sessions.

41. The participation of members of the Working Group at several meetings is contained in its report to the Commission. In addition, on 29 November 2005, a member of the Working Group participated in the Second International Symposium "Integration, Migratory Flows and Human Rights in the Andean Region — Strategies and Alternatives", organized in San Cristobal, Venezuela, by the Universidad Nacional Experimental del Tachira. On 6 and 7 April 2006, a Working Group member participated in an international expert meeting on "The Human Rights Council: Challenges Ahead", organized in Madrid by the Fundación para las Relaciones Internacionales y el Diálogo Exterior (FRIDE) and the Pedro Arrupe Institute for Human Rights at the University of Deusto, Bilbao. On 12 July 2006, a member of the Working Group presented a report on international experiences of legal regulation of mercenarism and new definitions of mercenaries, at the 20th World Congress of the International Political Science Association in Fukuoka, Japan.

42. The Chairperson and a member of the Working Group participated in the thirteenth annual meeting of special procedures mandate holders which was held in Geneva from 19 to 23 June 2006. The Chairperson of the Working Group was elected as a member of the Coordination Committee of the special procedures system. The two Working Group members took advantage of their presence in Geneva to meet the Special Representative of the Secretary-General on Children and Armed Conflict. After a discussion of their respective areas of work, they agreed to share information, in particular concerning children recruited by PMSCs.

F. Field missions

43. In December 2005, the Working Group invited the Governments of Fiji and Papua New Guinea to share information regarding the situation of former soldiers of

Fiji origin allegedly recruited to undertake security operations in Bougainville, Papua New Guinea, without appropriate visas. The case was considered during the February meeting and on 7 March 2006, the Group decided to request both Governments to extend it an invitation to visit in order to undertake a further assessment of the situation in the two countries. Those requests were reiterated by letters dated 25 April 2006. As of 8 August 2006, no response had been received.

44. On 10 March 2006, the Working Group sent a request to the Governments of Chile and Honduras for invitations to visit those countries.

45. On 21 April 2006, the Working Group requested invitations from the Governments of Colombia, Ecuador and Peru. By letters dated 7 and 9 June 2006, the Group reiterated the requests. By letters dated 21 and 23 June 2006, the Governments of Honduras and Ecuador, respectively, conveyed a positive response to the Working Group. The mission to Honduras took place from 21 to 25 August followed by the mission to Ecuador from 28 August to 1 September 2006. Reports on both missions will be submitted to the Human Rights Council. On 14 August 2006, the Working Group received positive feedback from the Permanent Mission of Peru.

IV. Analysis of the survey

46. In mid-November 2005, the Working Group sent a questionnaire concerning its mandate and activities to all Member States as well as to eight intergovernmental organizations and United Nations bodies and 36 NGOs. By letter dated 12 June 2006, the Working Group reiterated its invitation to submit information to those States that had not yet responded.

47. As of 21 August 2006, responses had been received from the following 13 States: Armenia, Colombia, Costa Rica, Ghana, Honduras, Lebanon, Malaysia, Mauritius, Mexico, Morocco, Namibia, Panama and Venezuela (Bolivarian Republic of).

48. The United Nations Research Institute for Social Development pointed out that its research programme did not include any projects dealing with the issue of mercenaries, while the Department for Safety and Security of the Secretariat indicated that the issues addressed fell outside its mandate. A response was also received from the NGO Médecins sans frontières which reported that the organization had no expertise in this field.

49. The Working Group would like to warmly thank all those that responded and presents herewith an analysis of the responses received.

50. The questionnaire first inquired into the Governments' intentions to counteract mercenarism, mercenary-related activities and to support the International Convention against the Recruitment, Use, Financing and Training of Mercenaries.

51. Ghana, Lebanon, Mauritius, Morocco and Venezuela reported their intention to accede to the International Convention.

52. Armenia, Ghana, Lebanon, Morocco and Venezuela indicated that they would strengthen their national legislation addressing mercenaries. The criminal code of Armenia provides in its article 395 that recruiting, training, financing or supporting mercenaries materially or in any other way, as well as using them in armed conflicts

or military actions is punished by imprisonment for 5 to 10 years while the participation of a mercenary in an armed conflict or military action is punished by imprisonment for 3 to 7 years. This article defines a mercenary as a specially recruited person who acts in order to receive financial compensation and is not a citizen of the State participating in the armed conflict or military action, does not permanently reside in its territory, is not a member of the armed forces of the State participating in the armed conflict or military action, and is not sent by another State to carry out official duties in the armed forces.

53. Namibia informed the Working Group that the National Defence Act enacted by the National Assembly contained provisions prohibiting not only mercenary-related activities, but also prohibiting Namibian citizens from serving in the military forces of other countries without written authorization of the Minister of Defence.

54. Armenia, Colombia, Costa Rica, Ghana, Malaysia, Morocco, Mexico, Panama and Venezuela indicated that they would actively participate in discussions on regional arrangements to combat the phenomenon, while Costa Rica, Ghana, Honduras, Morocco and Venezuela committed themselves to monitor mercenary activities and prosecute perpetrators.

55. The Government of Honduras further indicated that neither the use of the national territory by organizations that recruit mercenaries nor the transit of mercenaries through the country is allowed.

56. Asked what they would do to assist the United Nations through the work of the Working Group, States said that they would (a) provide information to the Group (Armenia, Costa Rica, Ghana, Honduras, Mauritius, Morocco, Mexico and Venezuela); (b) identify emerging trends in mercenarism (Armenia, Ghana, Mexico and Panama); (c) submit concrete proposals on possible new standards and guidelines encouraging further protection of human rights in addressing mercenarism (Mexico and Venezuela); and (d) monitor the activities of private companies offering military assistance, consultancy and security services on the international market (Armenia, Ghana, Honduras, Malaysia, Namibia and Venezuela).

57. States and organizations were also requested to express their views on the phenomenon of mercenarism and on how the Working Group could effectively discharge its mandate.

58. Costa Rica, Colombia, Mauritius and Morocco reported that they had not registered any cases of the presence of mercenaries in their respective countries. However, Costa Rica indicated full support for applying appropriate legal action to prevent the country being used as a possible base of operation for the destabilization of Governments in the region.

59. Namibia underlined the critical importance of the promotion and enhancement of international cooperation among States for the prevention, prosecution and punishment of mercenary-related offences, and encouraged countries that had not yet enacted legislation prohibiting mercenarism to put such legislation in place.

60. Ghana pointed out that refugee camps in the subregion had become centres of recruitment for mercenaries. More specifically, in Ghana it had been observed that all parties to the conflict in Côte d'Ivoire had been recruiting mercenaries from these camps. The Government further stated that some countries were

supplementing their military forces with mercenaries recruited from other countries, and advised countries within the subregion not to lend support to mercenaries in their countries who sought to subvert neighbouring Governments, e.g. by providing secret training camps.

61. Lebanon stated that it considered it important for the Working Group to convince more States to accede to the International Convention and to ensure compliance with the principles of international law and resolutions with international legitimacy. The identification of mechanisms to strengthen the international judicial system was also highlighted by Costa Rica as an important area on which the Working Group would have to focus. Mexico recommended that the Working Group should consider the new realities of mercenary activity and fill in the gaps with respect to international law.

62. Colombia stressed the need for the Working Group to identify the locations where this phenomenon existed, investigate the mode of operation and the manner in which mercenaries engaged in combat, and share the results with States in order to prevent the spread of this phenomenon to other locations. Panama stressed the need for the Working Group to share information and experience on a regular basis with partners and sectors so as to arrive at an understanding of the phenomenon and to focus attention on the legal definition of mercenaries and their activities. Morocco suggested that the Working Group should make recommendations to the Security Council with a view to applying material sanctions against States that harbour, encourage or produce mercenaries.

63. Pointing to the changing nature of conflict globally and the impact of the reformulation of the concept of "armed forces" on the recruitment, use, financing and training of mercenaries, Venezuela considered it important, as had Special Rapporteur Shaista Shameem, to examine the legal definition of mercenary. In this regard, the Government expressed the view that the definition should include legal persons, as well as private companies. The activities of PMSCs should be regulated and subjected to international monitoring. Nationals of countries who, for pay, take part in activities organized by another State against their own countries should also be included in the definition. The Working Group should promote the protection of human rights against threats posed by mercenary activities by drafting and presenting proposals for guidelines or basic principles to guide the work of national and international organizations that are involved in the dissemination of information. The possibility of setting up a regimen for licensing private security firms and maintaining an international register of such companies should be studied.

64. In its response, the United Nations Office for Legal Affairs outlined a number of concerns with regard to the political and legal implications of the proposed definition of mercenary, noting that it raises many issues which were contentious during the drawing up of the Convention. It also noted that links between mercenarism and terrorism are being deliberated by the Ad Hoc Committee established by General Assembly resolution 51/210, which has itself not made any connection. The Office suggested that Contracting States ought to initiate and take the lead in any effort to amend the International Convention and that the Working Group should consider whether the Sixth Committee should be involved in discussions concerning the definition, given its previous involvement in the elaboration of the International Convention.

V. Thematic issues

65. Private military and security companies and their employees fall into a grey area not specifically covered by the International Convention. In the absence of appropriate regulation, control and monitoring, the activities of these companies are in a number of situations a danger for the protection of human rights. These situations include situations of conflict, situations of authoritarian Governments and situations where local indigenous peoples are vulnerable. Indeed, extractive industries (oil, gas, timber and mining transnationals), in order to protect their premises and interests, as well as national and local authorities, may rely on mercenaries and PMSCs to restrict public demonstrations and protest movements.

66. The Working Group has received information indicating the existence of links between the activities of PMSCs and groups of mercenaries. Documented events include the attempted coup d'état in Equatorial Guinea by a group of mercenaries and executives of private security companies and in Papua New Guinea (Bougainville Island). These incidents, among others, present the international community with a complex phenomenon: mercenaries recruited by private security companies operating in situations of armed conflict and implicated in acts such as summary executions, torture, trafficking in persons, drugs and arms, terrorism, paramilitary and covert operations and human rights violations, as well as links between mercenaries, mercenary-related activities and activities of PMSCs and the extractive industry.

67. In some African regions, mercenarism, which comprises the use of mercenaries, the creation of private armies, the illegal exploitation of natural resources and trafficking in arms, has been inextricably linked with the continuation of armed conflicts. There are credible allegations that the activities of a timber company operating in Liberia were used to finance private militia forces to torture, intimidate, harass, rape, enslave, run a brothel, forcibly conscript child soldiers and smuggle arms. These militias were alleged to have participated in massacres of civilians.

68. The proliferation and trafficking of arms and the recruitment of mercenaries are fuelling and exacerbating conflicts in West Africa, as has been recognized by the Security Council.[1] Within the context of the links between new types of mercenaries and arms transfers, the Working Group endorses the recommendation made by the experts at its first meeting. The linkage between paramilitaries, mercenarism and covert operations is illustrated in the response of the Government of Venezuela to the questionnaire (see above). The Venezuelan authorities also indicated that there had been mercenary activities in the 2002 coup d'état.

69. The Working Group is particularly concerned at the impunity enjoyed by PMSCs operating in armed conflicts and violating human rights, and at the phenomenon of outsourcing by States of core military functions to those companies. The human rights violations allegedly perpetrated in the Abu Ghraib prison in Iraq involving employees of two private military and security companies are symptomatic of the concerns raised by outsourcing. The Working Group would like to emphasize that to its knowledge, the core military functions that were carried out by the employees of the two private military companies concerned were performed

[1] Security Council resolution 1607 (2005) of 21 June 2005.

without regulatory mechanisms requiring oversight and accountability. Although it seems that some internal investigations have been conducted by the two private contractors involved in the alleged human rights violations in Abu Ghraib, the employees allegedly implicated have neither been subject to external investigations nor have they been legally sanctioned, contrary to the assurances given by the Government of the United States of America.[2] Indeed, in the report of the High Commissioner for Human Rights on the situation in Iraq (E/CN.4/2005/4), the attention of United States authorities was drawn to the fact that an aspect of the security situation in Iraq was the hiring by the Coalition forces of private security organizations that had deployed personnel in significant numbers, estimated to be as high as 20,000, which raises the questions of what legal regime applies to them and what their duty of protection is. In comments submitted by United States authorities to the United Nations, the point was made that "United States contract personnel are under the direction of the Coalition and are subject to criminal jurisdiction in United States federal courts" (para. 24).

70. However, there have been reports indicating that out of 20 known cases of civilians suspected of criminal acts, there has only been one indictment, of a contractor on assault charges in connection with the death of a detainee in Afghanistan. There has not been a single prosecution of a private military contractor in Iraq.[3]

71. Other human rights violations committed by private security companies have been reported by special procedures mandate holders. The Special Rapporteur on extrajudicial, summary or arbitrary executions on a visit to Honduras concluded that a large number of children had been killed by employees of private security companies. These companies should under no circumstances be regarded as a substitute for or be allowed to take over the functions of the law enforcement authorities (see E/CN.4/2003/3/Add.2).

72. A further development is the increasing use of private security companies by some United Nations departments, programmes and agencies. The international literature on private military and security companies indicates that the United Nations has been contracting the services of these companies in a number of situations, particularly in zones of armed conflict. There have been allegations of human rights and international law violations by some of the companies contracted

[2] This seems to be a general pattern among private military and security companies. It has been reported that the only measure applied by a private military company operating in the 1990s in Bosnia and Herzegovina against its employees denounced by their colleagues as being allegedly implicated in sex crimes and a forced prostitution ring was to terminate their contracts, as well as those of the whistle-blowers who denounced them. D. Avant, *The Market for Force* (Cambridge, United Kingdom, Cambridge University Press, 2005), p. 234; P. W. Singer, *Corporate Warriors* (Ithaca, New York, Cornell University Press, 2004), pp. 222, 236. See also P. Chatterjee and A. C. Thompson, "Private Contractors and Torture at Abu Ghraib", www.CorpWatch.org, 7 March 2004; D. Phinney, "Prison Interrogation for Profit", www.CorpWatch.org, 15 September 2004; J. Brinkley and J. Glanz, "Iraq: Contractors Implicated in Prison Abuse Remain on Job", *The New York Times*, 4 May 2004; S. Harris, "Iraq: Oversight of Interrogation Contracts Broke Down", www.GovExec.com, 4 May 2005; P. Chatterjee, "An Interrogator Speaks Out", www.CorpWatch.org, 7 May 2005.

[3] See L. Cox, "Controversy of private security contractors hired by United States Government continues", news conference for presentation of Amnesty International's *Annual Report 2006*.

by the United Nations.[4] The Working Group is aware that the United Nations Interim Administration Mission in Kosovo (UNMIK) has issued regulation 2000/33 on the Licensing of Security Services Providers in Kosovo and Regulation of Their Employees. The United Nations Inter-Agency Standing Committee (IASC) and the Office for the Coordination of Humanitarian Affairs (OCHA) have considered the relationship between humanitarian operations and private security companies.[5] In response to the questionnaire sent by the Working Group in November 2005, the Department of Safety and Security informed the Working Group that General Assembly resolution 59/276, sect. XI, which establishes the Department, recognizes the need for the urgent implementation of a unified and strengthened management system in the United Nations, including continuous review of threat and risk assessment. The Department cannot assume responsibility for any of the issues addressed by the Working Group since they fall outside its mandate, but will undertake to provide available information relevant to the framework of the Working Group on a case-by-case basis, should it be available.

73. The Working Group would be pleased to discuss other guidelines that have been developed, and to what extent human rights standards form part of these policies.

74. It has also been reported that some PMSCs make arrangements with some Governments, particularly in Africa, under which, in exchange for providing security services, they receive concessions for the exploitation of natural resources (oil, gas, diamonds, timber and minerals). This may constitute violations of the economic rights of the local people, particularly their right to development (see E/CN.4/2000/NGO/148).

75. The Working Group wishes to insist on the primary responsibility of States under international and domestic law to maintain public security and law and order. They should not relinquish these prerogatives and should regulate, control and monitor the activities of such companies. The International Convention has a "gray zone" regarding core security functions that traditionally were performed by the army or the police. In addition, it does not contain any monitoring mechanism.

76. In an attempt to encompass the above-mentioned issues and fill the existing normative gap confronting the international community, the former Special Rapporteur on the use of mercenaries, Mr. Ballesteros, proposed to amend articles 1-3 of the International Convention which deal with the legal definition of

[4] A. Barret and S. Hughes, "British firm accused in United Nations 'sex scandal'", *The Observer*, 29 July 2001; P. W. Singer, op. cit., pp. 222-223; and "The Private Military Industry and Iraq: What We Have Learned and What Next?", Geneva Centre for Democratic Control of Armed Forces, 2004 (available at: www.dcaf.ch); D. Avant, op. cit., pp. 101-103, p. 171; D. Isenberg, "A Fistful of Contractors", British American Security Information Council, 2004 (available at www.basicint.org/pubs); D. Phinney, "From Mercenaries to Peacemakers", 29 November 2005, www.CorpWatch.org.

[5] OCHA et. al, Guidelines on the Use of Military and Civil Defence Assets to Support United Nations Humanitarian Activities in Complex Emergencies, March 2003 (available at http://www.coe-dmha.org/guidelines01.htm); OCHA, Use of Military or Armed Escorts for Humanitarian Convoys, Discussion Paper and Non-Binding Generic Guidelines, (draft), September 2001 (available at http://www.who.int/hoc/network/interagency/GuidlinesonArmedEscorts_Sept2001.pdf); Civil-Military Relationship in Complex Emergencies, An IASC reference paper, June 2004, p. 5 (available at http://www.coe-dmha.org/Media/Guidance/IIASCReference.pdf).

mercenaries (see A/58/115, annex). His proposed amended article 3 of the Convention would include as internationally prosecutable offences the participation of a mercenary in: "destabilization of legitimate governments, terrorism, trafficking in persons, drugs and arms and any other illicit trafficking, sabotage, selective assassination, transnational organized crime, forcible control of valuable natural resources and unlawful possession of nuclear or bacteriological materials". The Commonwealth of Independent States incorporated into its Model Law "On Counteracting Mercenarism" a group of articles on State licensing of private military and security companies aimed at preventing mercenary-related activities. The replies of Member States to the proposal for a new legal definition of mercenaries as well as a summary of the views of experts participating at the third meeting of experts on traditional and new forms of mercenary activity (see E/CN.4/2005/23) can be found in the report of former Special Rapporteur, Ms. Shaheen, to the General Assembly at its sixtieth session (A/60/263, paras. 7-14 and 25-32).

VI. Country situations

A. Africa

77. During its February meeting, the Working Group considered the reported situation in prison of alleged mercenaries convicted in 2004 of attempting to overthrow the Government of Equatorial Guinea, and related allegations of torture and mistreatment.

78. By letter dated 7 March 2006, the Working Group reminded the authorities of Equatorial Guinea of the communication sent to the Government on 2 June 2005 by the former Special Rapporteur, reiterated concerns vis-à-vis the situation, and urged the Government to take all necessary measures to guarantee that the rights and freedoms of the aforementioned persons were respected and that any person found guilty of the alleged violations would be held accountable.

79. The General Assembly has on numerous occasions expressed its concern at the danger that activities of mercenaries pose to peace and security in developing countries, particularly in Africa.[6] In his reports, former Special Rapporteur Ballesteros has identified such situations. Several reports of the Security Council[7] also indicate the presence of such activities in armed conflicts, particularly in West and Central Africa and the Great Lakes Region.

80. In October 2005, the attention of the international community was drawn to the fact that the Government of Côte d'Ivoire was recruiting Liberian children along with hundreds of former combatants in Liberia's civil war in the face of renewed

[6] Resolution 59/178 and previous resolutions.

[7] Fifth progress report of the Secretary-General on the United Nations Mission in Liberia (S/2004/972). Report of the Panel of Experts on Liberia (see S/2005/745, paras. 137-147); final report of the Group of Experts on Côte d'Ivoire (see S/2005/699). This report indicates that prior to the embargo in November 2004 Côte d'Ivoire contracted a significant number of foreign State and private military companies from Belarus, Bulgaria, France, Israel, the Russian Federation, South Africa, Ukraine and the United Kingdom to assist it with training, maintenance and use of military equipment (paras. 158-167).

fighting with rebel forces.[8] Owing to the economic situation of their families ex-combatant children have been obliged to abandon educational and vocational programmes which had been established for them in towns close to the border with Côte d'Ivoire. Apparently, this situation has been exploited by commanders who recruit them to fight in Côte d'Ivoire. Civilian police of the United Nations Mission in Liberia (UNMIL), together with the Liberian National Police, arrested an alleged Ivorian recruiter in March 2005. As a result, recruitment abated for a time, but the alleged recruiter was later released for lack of evidence (see S/2005/366). The Government of Ghana has also reported mercenary activities in the region (see para. 60 above).

B. Fiji and Papua New Guinea

81. The Working Group has been following closely the situation in Papua New Guinea, on the autonomous island province of Bougainville, which has had and continues to have implications for the subregion following the Bougainville Peace Agreement in 2001. The conflict there, beginning in 1988, claimed between 15,000 and 20,000 lives. The United Nations Observation Mission in Bougainville (UNOMB) declared the weapons disposal programme complete and verified that the situation in Bougainville was a conducive to holding elections, thus ending its mandated presence on 30 June 2005. The Working Group has since received information on the situation of a group of former soldiers of Fiji origin allegedly recruited to undertake mercenary activities in Bougainville. Reportedly entering Papua New Guinea without appropriate visas, the individuals have allegedly been recruited to provide security training and advice for a former Bougainville leader who controls the "no-go zone" in the south of Bougainville. While it has been reported that among this group, five persons — three from Fiji, one from Australia and one from the United Kingdom — left Bougainville in the course of the year, occasional violence and clashes have occurred throughout 2006, including in the areas of Buin and Siwai. The Working Group urges all actors to take precautionary measures and de-escalate challenges to law and order in the southern region of Bougainville, and reiterates its interest in undertaking a joint country visit to Papua New Guinea and Fiji.

C. Latin America and the Caribbean

82. With the complexities of new conflicts, Governments have increasingly contracted private security companies in the region. Reports indicate that these private companies are involved in training and recruiting Latin American personnel to engage in armed conflict situations around the world.

83. Another concern is the presence of private contractors providing security services and the training of personnel in strategic zones of water and energy reserves, in particular oil fields, thus precluding the local population from enjoying the right to development, including the rights to food and adequate housing.

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[8] From: http://hrw.org/english/docs/2005/10/27/cotedi11935.htm. According to a United Nations report (see final report of the Group of Experts on Côte d'Ivoire) (S/2005/699), the recruitment of children seems to have been taking place since at least November 2004.

84. In order to obtain financial assistance from a third country, national legislation neither allows nationals of that country to be tried in the host country nor that cases involving them be brought to the International Criminal Court.

85. In some countries, activities related to counter-insurgency, antinarcotics activities or combating terrorism in Latin America have resulted in human rights violations against civilian populations, such as indiscriminate shelling, extrajudicial killings, sexual exploitation and trafficking in arms.

86. The contracting of Latin American personnel to work in military operations in Iraq and Afghanistan has been amply covered by the media, as were allegations by persons affected by unclear contract clauses which violate international labour norms and the Universal Declaration of Human Rights.

87. The Working Group has received information indicating that high salaries may encourage members of national armed forces to resign in order to work for private companies.

88. Transnational companies create satellite subsidiaries with legal personality in one country, their logistical and contractual bases in another, and recruit personnel from neighbouring countries. Allegations by personnel indicate that while in theory they have been contracted for non-military functions, they find themselves in situations where they receive military training, carry weapons and work under permanent stress for up to 16 hours a day. If they do not follow the rules of the company, they are prevented from returning to their country of origin.

89. In addition to violations of international labour norms, the question arises as to who is responsible for the human rights violations committed by these personnel, trained by companies with little control and without a clear country of origin.

90. On 17 July 2006, the Working Group sent a letter of allegation informing the Chilean authorities that it had received information concerning the recruitment of ex-military and ex-police from Chile by private companies located in Chile or abroad, some of them administrated by Chilean nationals.

VII. National, regional and international legislation/status of the Convention

91. The Working Group considered aspects of national, regional and international legislation, particularly the CIS Model Law "On Counteracting Mercenarism" and relevant instruments of the Economic Community of West African States (ECOWAS), as well as the possibility of compiling and analysing all relevant legislation on mercenaries and mercenary-related activity and disseminating that collection of documents, with a view to raising awareness of the issue and corresponding approaches adopted (see E/CN.4/2006/11 and Add.1).

92. The International Convention against the Recruitment, Use, Financing and Training of Mercenaries, which the General Assembly adopted by resolution 44/34 of 4 December 1989, entered into force on 20 October 2001 when the twenty-second instrument of ratification or accession was deposited with the Secretary-General of the United Nations. The Republic of Moldova deposited its instrument of accession on 28 February 2006. There are now 28 States parties to the Convention: Azerbaijan, Barbados, Belarus, Belgium, Cameroon, Costa Rica, Croatia, Cyprus,

Georgia, Guinea, Italy, Liberia, Libyan Arab Jamahiriya, Maldives, Mali, Mauritania, Republic of Moldova, New Zealand, Qatar, Saudi Arabia, Senegal, Seychelles, Suriname, Togo, Turkmenistan, Ukraine, Uruguay and Uzbekistan.

VIII. Future activities

93. Within its mandate to develop new proposals on possible new standards, the Working Group has endorsed the proposal of former Special Rapporteur Shameen to address fundamental questions, such as the core actors in the monopoly of the use of force, at a high-level round table, convened under United Nations auspices, which would allow for high-level political as well as more philosophical and methodological consideration of the issues.

94. In order to fulfil its mandate and establish a clear distinction between those companies which offer security services in strict compliance with imperative norms such as respect for the principle of the State's monopoly on the use of the force and those conducting mercenary activities which should be criminalized, the Working Group asked Member States whether they would be prepared to host a regional or global round table to discuss the role of the State as holder of the monopoly on the use of force. Armenia, Costa Rica, Ghana, Honduras, Lebanon, Morocco, Mexico and Venezuela responded favourably. The Working Group will therefore engage during the coming months in discussions with these countries, with a view to organizing such a meeting, which would facilitate a critical understanding of the responsibilities of the different actors including private military and security companies in the current context, and their respective obligations for the protection and promotion of human rights.

IX. Conclusions and recommendations

95. **Noting that only 28 States have ratified the International Convention against the Recruitment, Use, Financing and Training of Mercenaries, the Working Group recommends that Member States that have not yet done so consider ratifying or acceding to the International Convention and incorporating relevant legal norms into their national legislation.**

96. **The Working Group encourages States to incorporate international legislation, as well as regional legislation where such regional frameworks exist (e.g. AU, ECOWAS and CIS), into national law.**

97. **The Working Group recommends the application of the normative provisions of the draft Norms on the responsibilities of transnational corporations and other business enterprises with regard to human rights to those private military and security companies operating and providing military and security services in more than one country, or as a cluster of economic entities operating in two or more countries. Particular consideration should be given in this regard to the right to security of the person, the rights of workers and respect for national sovereignty, territorial integrity and human rights.**

98. **The Working Group recommends that, in order to ensure that the military assistance, consultancy and security services offered by private companies at the international level neither impede the enjoyment of nor violate human**

rights, Governments of States from which these private companies export such services should adopt legislation to set up regulatory mechanisms to control and monitor their activities, including a system of registering and licensing which would authorize these companies to operate and allow them to be sanctioned when the norms are not respected.

99. **The Working Group also encourages Governments that import the military assistance, consultancy and security services provided by private companies to establish regulatory mechanisms for the registering and licensing of these companies in order to ensure that imported services provided by these private companies neither impede the enjoyment of human rights nor violate human rights in the recipient country.**

100. **The Working Group recommends that United Nations departments, offices, organizations, programmes and funds establish guidelines containing pertinent criteria aimed at regulating and monitoring the activities of the private security/military companies working under their respective authorities. They should also require and ensure that the guidelines comply with human rights standards and international humanitarian law. In particular, they should require that the personnel employed by these companies have not been involved in human rights abuses.**

101. **The Working Group recommends that in order to fulfil its complex mandate and the challenges given to it under Commission resolution 2005/2, it be allowed to hold three sessions per year.**

102. **The Working Group supports the recommendation of the former Special Rapporteur on mercenaries (see A/60/263) that a high-level round table be convened under the auspices of the United Nations to discuss the fundamental question of the role of the State as holder of the monopoly on the use of force. Such a meeting will facilitate a critical understanding of responsibilities of the different actors, including private military and security companies, in the current context and their respective obligations for the protection and promotion of human rights. The Working Group welcomes the expressed willingness of Member States to host regional round tables in this regard.**

103. **The Working Group requests the General Assembly to increase accordingly the budget allocated for the Working Group in order to meet the demands of its future activities.**

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Administration of justice at the United Nations

Administration of justice in the Secretariat: implementation of resolution 59/283

Report of the Secretary-General**

Summary

The present report is submitted to inform the General Assembly of the action taken by the Secretary-General to implement the decisions and requests contained in resolution 59/283.

The report focuses specifically on measures taken to implement the decisions and requests contained in sections I and III of resolution 59/283, including those undertaken to implement the recommendations contained in the report of the Office of Internal Oversight Services on the management review of the appeals process at the United Nations (A/59/408).

Measures taken by the Office of the Ombudsman to implement the decisions and requests contained in section II of resolution 59/283 are the subject of separate reports by the Secretary-General to the General Assembly.

In section IV of resolution 59/283, the General Assembly decided that the Secretary-General should form a panel of external and independent experts to consider redesigning the system of administration of justice. The Redesign Panel on the United Nations system of administration of justice was established. On 20 July 2006 the Panel presented its report to the Secretary-General, who transmitted the report to the General Assembly (see A/61/205). Pursuant to the request of the General Assembly, the Secretary-General will submit his comments on that report to the Assembly at the resumed part of its sixty-first session.

* A/61/150.
** Submission of the present document was delayed owing to extensive consultations.

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I. Introduction

A. Genesis and purpose of the report

1. By its resolution 59/283, the General Assembly requested the Secretary-General to implement a series of measures aimed at improving the process of the administration of justice at the United Nations. The measures detailed therein were categorized into four areas:

(a) Cross-cutting issues: general guidelines;

(b) The informal mechanism of administration of justice;

(c) The formal mechanisms of administration of justice;

(d) Review of the internal justice system.

2. The purpose of the present report is to inform the General Assembly of action taken by the Secretary-General to implement the decisions and requests contained in resolution 59/283.

B. Structure and scope of the report

3. Section II of the present report details action taken to implement measures related to cross-cutting issues — general guidelines. Information on the implementation of measures pertaining to the informal system of justice are provided in a separate report by the Secretary-General concerning the activities of the Ombudsman (see A/60/376 and an additional report is being prepared by the Office of the Ombudsman). Section III below focuses on the implementation of measures relative to the improvement of the formal mechanisms of administration of justice.

4. In section IV of resolution 59/283, the General Assembly decided that the Secretary-General should form a panel of external and independent experts to consider redesigning the system of administration of justice. The terms of reference of the panel directed that it propose a model for a new system for resolving staff grievances. The Secretary-General implemented that decision, and the Redesign Panel began its work on 1 February 2006. On 20 July 2006, the Panel presented a report to the Secretary-General, who transmitted it to the General Assembly (see A/61/205).

5. In paragraph 52 of resolution 59/283, the General Assembly further requested the Secretary-General to submit comments on the recommendations of the Redesign Panel, along with the estimate of time and resources needed for their implementation. Those comments will be the subject of a separate report which will be submitted to the General Assembly at the resumed part of its sixty-first session.

6. The improvement of the current system of justice is a work in progress. In view of the comprehensive terms of reference of the Redesign Panel for the implementation of the measures set out in resolution 59/283, which included the review of the system of justice in its entirety, care has been taken not to prejudge the outcome of the work of the Panel.

II. Cross-cutting issues

7. *In paragraphs 3 to 17 of resolution 59/283*, the General Assembly considered a number of cross-cutting issues and specified measures to be taken in order to strengthen the entire system of administration of justice in the Secretariat. Those issues included the following: (a) time limits; (b) the appearance of conflict of interest in formulating decisions on appeals; (c) training of all staff involved in the system of administration of justice; (d) increasing staff participation in the Joint Appeals Board ("jury system"); and (e) the financial liability of managers. In paragraph 15, the General Assembly further requested the Secretary-General to expeditiously implement, subject to the provisions of the same resolution, the recommendations contained in the report of the Office of Internal Oversight Services (OIOS) concerning management review of the appeals process at the United Nations (A/59/408).

8. Information is provided below on progress made with respect to each of the issues specified in paragraph 7 above and the implementation of the cross-cutting recommendations contained in the above-mentioned OIOS report.

A. Time limits

9. In paragraph 16 of resolution 59/283, the General Assembly decided that the time limits recommended by OIOS in its report would be mandatory within the appeals process once adequate capacity is in place, and no later than 1 January 2006.

10. In its report, OIOS made two recommendations in that respect:

(a) Recommendation 1, "Adopt the time lines for the appeals process set out in annex III of the OIOS report, reflecting both existing procedural deadlines and new deadlines suggested by OIOS. Direct the secretariats of the Joint Appeals Board to amend their rules of procedure accordingly";

(b) Recommendation 4, "Direct the secretariats of the Joint Appeals Board to amend the rules of procedure to the effect that the presiding officer may give only one extension, of no more than one month, to the respondent to allow the respondent to prepare an initial reply. In case this deadline is not met, the presiding officer should determine whether the case can proceed without input from the respondent".

11. The secretariats of the Joint Appeals Board in New York, Geneva, Vienna and Nairobi are at various stages of amending their respective rules of procedure, within the context of their legislative processes, so as to bring them in line with the recommendations set out in annex III to the OIOS report.

12. The Joint Appeals Board secretariat in Geneva is currently revising its rules of procedure to reflect the recommendations concerning time limits set out in annex III to the OIOS report. It is expected that the new rules will be adopted by the new Board at its first plenary meeting to be held in October 2006. According to the proposed new rules of procedure, the Joint Appeals Board secretariat in Geneva expects that steps 4, 5 and 6 of annex III will be immediately put into practice. However, the time limit set out in step 7 of the annex will not be applied immediately in view of the existing backlog of cases. With respect to step 8 of the annex, the Joint Appeals Board secretariat in Geneva believes that in almost all

cases the time limit proposed will be complied with, but expressed concern that there might be cases which cannot be considered by a panel within two months.

13. In the case of the Joint Appeals Board secretariats in New York, Vienna and Nairobi, the rules of procedure have yet to be formally amended but those secretariats have, in practice, been adhering more or less to the time lines set out in annex III to the OIOS report. For example, during the second half of 2005, the Joint Appeals Board secretariat in New York adopted a series of interim measures restricting the time-limit extensions granted to the Administrative Law Unit for filing a respondent's replies to appeals filed before the end of 2005, as a first step towards the full implementation of the time limits for the appeals process. With respect to appeals filed after 1 January 2006, the Joint Appeals Board in New York has granted the Administrative Law Unit only one extension of no more than a month when the Unit is not able to file the respondent's replies within the statutory two months. Such requests for extension have been granted with the understanding that in the absence of compelling reasons, no further request would be entertained. In another measure to comply with the time limits, the Joint Appeals Board secretariat in New York regularly advises the parties of the need to comply with the stipulated time limits for submitting additional pleadings, with a warning that in case of failure to file observations and comments on time, their cases would be submitted for consideration by Joint Appeals Board panels on the basis of the original written presentations. As a result of those measures, the Administrative Law Unit has managed to file the vast majority of the respondents' replies for cases filed as of 1 January 2006 within the specified time limits.

B. Appearance of conflict of interest

14. In paragraph 17 of its resolution 59/283, the General Assembly decided that measures should be taken to eliminate the appearance of conflict of interest and to this end requested the Secretary-General to proceed with the transfer of the responsibility for formulating decisions on appeals from the Department of Management of the Secretariat to the Office of the Secretary-General. This decision derived from recommendation 14 of the OIOS report.

15. In considering the implementation of the request to transfer responsibility for formulating decisions on appeals, the following factors were taken into account:

(a) The number of appeals requiring a decision amount to some 80 to 90 cases per year;

(b) The statutory time limit for taking a decision on an appeal is 30 days;

(c) Decisions on requests for the suspension of action (which form part of the appellate process and amount to approximately 30 per annum) must be taken even faster, usually within one to two days from receipt of the report of the Joint Appeals Board, and sometimes on the same day;

(d) As the Assembly's request referred to only decisions on appeals and did not refer to decisions on disciplinary cases, decisions on the latter (ranging between twenty (20) and forty (40) cases per annum) would continue to be taken by the Under-Secretary-General for Management on behalf of the Secretary-General.

16. The conclusion reached in the light of consideration of the above factors was that the current composition, structure and work exigencies of the Office of the Secretary-General would make it impossible for that Office to carry out the important task entrusted to it by the Assembly within the statutory deadlines. Indeed, no capacity exists in the Office of the Secretary-General for taking over the decision-making process on 80 to 90 appeals annually.

17. In this respect, it was considered that should the transfer of responsibility proceed in the absence of the necessary capacity, the decision-making process would at best be inordinately delayed, or at worst grind to a halt. The resultant delays would have serious repercussions for the system of justice as a whole, as they would adversely affect not only the timely functioning of the system but also the appellants themselves and staff morale in general. Furthermore, the subsequent delays would increase the backlog of cases and expose the Organization to financial liability, as the Administrative Tribunal would, in accordance with its normal practice, award compensation for the delays and the Administration's lack of conformity with statutory deadlines. The consequence of those delays would be even more significant with regard to decisions on requests for suspension of action. The majority of those requests seek to "freeze" a decision to terminate or not renew the appointment of a staff member. The lack of timely decisions on such requests would be to the detriment of both the staff members and the Organization and would increase the risk of exposure to unnecessary damages in the absence of immediate relief granted when a staff member presents a strong prima facie case warranting suspension.

18. In the light of the above considerations, there was no alternative but for the Under-Secretary-General for Management to continue to exercise the competencies delegated to him by the Secretary-General in approving or rejecting recommendations from the Joint Appeals Board regarding appeals.

C. Training

19. In paragraph 10 of its resolution 59/283, the General Assembly called upon the Secretary-General to organize periodic training at each of the headquarters duty stations for all staff involved in the system of administration of justice. Focusing specifically on the Joint Appeals Board, the resolution further stressed, in paragraph 34, the importance of providing adequate training to the members of the Board. The need for a yearly two-day training course at each of the headquarters duty stations for all staff involved in the judiciary process was recognized by OIOS in recommendation 15 of its report.

20. Steps have been undertaken to implement those requests and provide appropriate training for staff involved in the administration of justice. Thus, all members of the Joint Appeals Board at New York Headquarters who were appointed in September 2005 attended a training session in November 2005. The training further included presentations by the members of the United Nations Administrative Tribunal. A total of 55 participants were registered. It is expected that the members of the Joint Appeals Board in New York will receive a similar training module in the fall of 2006. Similarly, the members of the Joint Disciplinary Committee in New York who were appointed in May 2006 attended a training course in June of the

same year. Both procedural issues and substantive matters pertaining to the Tribunal's jurisprudence were discussed.

21. In Geneva, the training for members of the Joint Appeals Board and Joint Disciplinary Committee is currently organized by their secretariats of those bodies at the beginning of each new mandate.

22. The Office of the Coordinator of the Panel of Counsel offers seminars and training sessions to the members of the Panel on a regular basis. Individual briefings and orientation sessions are also provided in accordance with each member's needs and requests. The Office of the Coordinator of the Panel of Counsel also offers training sessions to the staff at large to inform them of their rights and to encourage volunteerism. In 2005 and 2006, 12 seminars/training courses were offered covering a myriad of issues (for example, mediation, disciplinary proceedings; contracts and arbitration; investigation and fact-finding in sexual harassment complaints; question-and-answer sessions with judges of the Tribunal; professional ethics; and conflicts of interest).

23. The Office of Human Resources Management has taken steps to implement recommendation 15 of the OIOS report on the organization of a yearly two-day training course. The Office of Human Resources Management, in cooperation with the Office of the Under-Secretary-General for Management, and, if possible, the United Nations Development Programme and the United Nations Children's Fund will design a programme for the participants in the justice system as it currently exists. It is anticipated that the programme will be offered in the fourth quarter of 2006. The purpose of the programme will be to make the existing system more efficient pending consideration of the recommendations of the Redesign Panel.

D. Increasing staff participation in the Joint Appeals Board

24. In paragraph 30 of his report on the administration of justice in the Secretariat (A/59/449), the Secretary-General put forward the proposal to move from a recourse system that depends entirely on volunteers to a "jury system" for the Joint Appeals Board to address the delays resulting from the difficulty in identifying a sufficient pool of staff to serve on the Board. Pursuant to that proposal, the General Assembly requested the Secretary-General, in paragraph 8 of its resolution 59/283, to explore the implications of that option. In view of the establishment of the Redesign Panel by the same resolution, however, and pending the submission by the Secretary-General of his comments on the report of the Redesign Panel, the Secretariat considered that it would be premature, in the intervening period, to explore this option further.

E. Financial liability of managers

25. In paragraph 14 of its resolution 59/283, the General Assembly requested the Secretary-General to report on the implementation of the Secretary-General's bulletin on the financial liability of managers (ST/SGB/2004/14).

26. The first step taken by the Secretariat towards the implementation of ST/SGB/2004/14[1] was the issuance of an administrative instruction concerning the financial responsibility of staff members for gross negligence (ST/AI/2004/3), which sets out the specific procedures to be followed in cases of suspected gross negligence resulting in financial loss to the Organization. Section 1.3 of the administrative instruction defines "gross negligence" as "negligence of a very high degree involving an extreme and wilful or reckless failure to act as a reasonable person in applying or in failing to apply the regulations and rules of the Organization". Instances where a financial loss suffered by the Organization results from an inadvertent error, oversight or simple negligence, or inability to foresee the negative consequences of a chosen course of action are specifically excluded from the application of the procedures for recovery of monies lost. To date, no cases of gross negligence have been processed under the new procedures.

III. Formal mechanisms of the administration of justice

27. By its resolution 59/283, the General Assembly requested the Secretary-General to implement measures aimed at improving the different components of the formal mechanism of the administration of justice. Measures taken in this respect by the Panel of Counsel, the Administrative Law Unit, the Joint Appeals Board and the United Nations Administrative Tribunal are described in detail below.

A. Panel of Counsel

28. In recommendation 13 of its report, OIOS recommended that consideration be given to the addition of a Professional post to the Panel of Counsel in New York, the incumbent of which would also provide support to the panels of counsel in the other headquarters duty stations. Pursuant to that recommendation, general temporary assistance funds were approved for a P-4 Legal Officer under the proposed budget for the support account for peacekeeping operations for the period 1 July 2005 to 30 June 2006 and for the period 1 July 2006 to 30 June 2007. Those funds have been used to recruit five part-time Legal Officers (who have advised on 118 cases during the first year) and one consultant tasked with the development and maintenance of a database of all cases submitted to the Panel of Counsel in New York (252 new cases for the period July 2005-June 2006).

29. In paragraph 28 of resolution 59/283, the General Assembly requested the Secretary-General to consider the inclusion of travel costs in section 28 A, Office of the Under-Secretary-General for Management, for the Coordinator of the Panel of Counsel to conduct outreach activities. A proposal for travel costs to three duty stations was submitted to the Advisory Committee on Administrative and Budgetary Questions, which concluded that the costs for such outreach activities should be found within existing resources. To date, no additional resources have been made available for travel costs for the purpose stated above. However, the Coordinator of

[1] ST/SGB/2004/14 amended to staff rule 112.3 to read: "Any staff member may be required to reimburse the United Nations either partially or in full for any financial loss suffered by the United Nations as a result of the staff member's gross negligence or of his or her having violated any regulation, rule or administrative instruction."

the Panel of Counsel in New York has continued to provide an extensive training programme as part of the outreach activities (see para. 22 above).

B. Administrative Law Unit

30. In order to advance the cooperation of managers in the appeals process and improve managers' accountability, the General Assembly requested the Secretary-General, in paragraph 32 of resolution 59/283, to ensure that written explanations by managers to the Administrative Law Unit are submitted within eight weeks with no possibility of extension, and decided that compliance with that responsibility should constitute part of the performance appraisal of managers. In paragraph 33 of the same resolution, the General Assembly further decided to amend staff rule 111.2 (a) to provide that staff wishing to appeal an administrative decision should submit to the executive head of their department, office, fund or programme a copy of a letter addressed to the Secretary-General requesting a review of the case. Similar provisions were contained in recommendations 2 and 3 of the OIOS report.

31. Further to the General Assembly's requests, staff rule 111.2 (a) was amended, effective 1 January 2006, to provide that staff members wishing to appeal an administrative decision should, as a first step, address a letter to the Secretary-General and send a copy to the executive head of the staff member's department, office, fund or programme requesting that the administrative decision be reviewed. In addition, with effect from June 2005, the Office of Human Resources Management routinely informs managers of (a) the requirements for the conduct of administrative reviews; (b) their responsibility for justifying a contested decision, to be included in the respondent's reply; and (c) the time frame for both administrative review and submission of their comments. The question of how to implement the General Assembly's decision that the compliance of managers with their responsibility in the appeals process should be included in their performance appraisal will be taken up in the review of the performance appraisal system in 2007.

32. In paragraph 30 of resolution 59/283, the General Assembly requested the Secretary-General to present proposals to separate the functions of the Administrative Law Unit (administrative review, appeals, disciplinary matters and advisory services) through the redeployment of resources in order to avoid a conflict of interest. The report of the Secretary-General on administration of justice in the Secretariat (A/59/883) addresses that request. It should also be noted that the matter will be revisited in the light of the recommendations contained in the report of the Redesign Panel and included in the comments of the Secretary-General thereon.

33. The staffing situation in the Administrative Law Unit and the need for additional staff to reduce delays in the preparation of the respondent's replies, were the object of recommendations 5 and 8 of the OIOS report. Following the approval of an additional P-3 post, a staff member was recruited effective 1 September 2006. An assessment of the impact of the additional Legal Officer will be made within six months of the filling of the post.

34. In recommendation 5 of its report, OIOS requested the Department of Management to consider the need to amend the Staff Rules to the effect that the Secretary-General shall approve by default the appellant's access to the United Nations Administrative Tribunal should the respondent fail to respond within the

prescribed time frame. Insofar as the failure to submit the respondent's reply in a timely manner, as indeed noted by OIOS in its report, is mainly a question of insufficient resources, additional resources may be a proper solution. In addition and in order to avoid frequent changes to the Staff Rules, it is expected that the issue of whether or not an amendment to the Staff Rules should be introduced will be revisited in the light of the recommendations contained in the report of the Redesign Panel and the Secretary-General's comments thereon, to be transmitted to the General Assembly at its sixty-first session.

C. Joint Appeals Board

35. Several recommendations made by OIOS in its report focused on the secretariats of the Joint Appeals Board. Those recommendations concerned amendments to the rules of procedure, adequate capacity, annual meetings and electronic tracking systems. Measures taken towards the implementation of those recommendations are set out below.

Amendments to the rules of procedure

36. Three of the recommendations referred to in paragraph 35 above read as follows:

> "(a) Recommendation 4: Direct the secretariats of the Joint Appeals Board to amend the rules of procedure to the effect that the presiding officer may give only one extension, of no more than one month, to the respondent to allow the respondent to prepare an initial reply. In case this deadline is not met, the presiding officer should determine whether the case can proceed without input from the respondent;
>
> "(b) Recommendation 6: Direct the secretariats of the Joint Appeals Board to amend the rules of procedure of the Board to the effect that pleadings should consist of the respondent's reply, the appellant's observations and, if needed, one additional set of comments from the respondent and one final statement from the appellant. If deadlines are not strictly observed, a case may be declared abandoned or proceed on the basis of available information;
>
> "(c) Recommendation 7: Direct the secretariats of the Joint Appeals Board to amend the rules and procedure of the Board to authorize the presiding officer to place a case at the front of the queue when it concerns the non-renewal of contract, as protracted delays cause undue hardship given the financial implications of unemployment."

37. As reported in paragraphs 11 and 12 above, the Joint Appeals Board secretariats in New York, Geneva, Vienna and Nairobi are at various stages of reviewing their respective rules of procedure for amendment, within the context of their legislative processes, so as to bring them in line with the recommendations made by OIOS and as set out in annex III to its report. While the rules of procedure of the JAB secretariats in New York, Geneva, Vienna and Nairobi have yet to be formally amended, the secretariats have, in practice, been adhering more or less to the time lines set out in annex III of the OIOS report.

38. Recommendation 7 was not accepted by the Secretariat, as mentioned already in the OIOS report, because a significant number of cases concern the non-renewal

of contracts, and giving priority would be unfair to those appellants who not only filed their claims earlier but also consider their claims to be just as legitimate as claims relating to non-renewal of contracts.

Adequate capacity

39. In recommendation 9 of its report, OIOS recommended sustaining the current effort to provide additional capacity to the secretariat of the New York Joint Appeals Board from temporary assistance funds to clear its backlog and adding a Professional post at the P-3 level to prevent the accumulation of a new backlog. OIOS also recommended regularizing the temporary arrangement to provide a full-time presiding officer and to make use of the provided powers of the presiding officer to streamline the work of the Board.

40. The proposed budget for the support account for peacekeeping operations for the period 1 July 2006 to 30 June 2007 includes funds for the continuation of the post of Legal Officer at the P-3 level, which was initially approved in the context of the peacekeeping support account for the period 1 July 2005 to 30 June 2006. Further, the proposed programme budget for the biennium 2006/2007 approved the request to establish one P-5 post in the secretariat of the New York Joint Appeals Board to implement the recommendation pertaining to a full-time presiding officer. Since the term of office of the current presiding officer of the Joint Appeals Board expires at the end of October 2006, and in order to fill the post, a letter was sent to all Joint Appeals Board Chairpersons on 2 June 2006 asking them to nominate either themselves or others for that post.[2] No response has been received as of the writing of the present report. It should also be noted in this context that as the overwhelming majority of the current chairpersons (16 out of 22) are at the level of Director, the pool of available and eligible chairpersons who could be considered for the post of full-time presiding officer of the Joint Appeals Board is rather limited.

41. In recommendation 10, OIOS recommended strengthening the current staffing of the Board secretariat in Geneva by upgrading one P-2 post to the P-3 level and allowing for the creation of a Deputy Secretary post that was not subject to biannual rotation, thereby increasing institutional stability and productivity. OIOS also recommended allocating general temporary assistance funding until the backlog was eliminated. In that respect, a request for the reclassification of one P-2 post to accommodate the post of Deputy Secretary at the P-3 level was approved by the General Assembly in the context of the proposed programme budget for the biennium 2006-2007, and it is expected that the vacancy announcement will be issued before the end of the year. In addition, general temporary assistance funds have been used to recruit two legal officers to eliminate the backlog. However, due to the considerable increase in Joint Disciplinary Committee cases, it will be necessary to extend the employment of the two legal officers in 2007.

42. In recommendation 11, OIOS recommended the establishment of a full-time post of Secretary at the P-3 level for the Vienna Joint Appeals Board, together with a part-time position of administrative assistant. In that respect, one P-3 post and one G-4 post were approved by the General Assembly in the context of the proposed programme budget for the biennium 2006-2007. The vacancy announcement for the

[2] According to staff rule 111.1 (e), only a Joint Appeals Board chairperson may become a presiding officer of the Board.

P-3 post has been issued and the selection of incumbents is expected to be finalized shortly.

43. With respect to the Joint Appeals Board in Nairobi, recommendation 12 was recommended to reinforce its secretariat capacity with an associate expert to address the current backlog. In that respect, funds have been made available for an associate expert. In addition, a request for general temporary assistance funds has been approved in the context of the proposed programme budget for the period 2006-2007 to address the elimination of the backlog. OIOS also recommended that the Joint Appeals Board in Nairobi expand its jurisdiction to include the Economic Commission for Africa. Such an expansion would require a change in the rules of procedure and in staff rule 111.2 (d) and will be revisited in the context of consideration of the recommendations made by the Redesign Panel. Three additional measures were detailed in recommendation 12: (a) to establish case-tracking and planning systems; (b) to expand the Joint Appeals Board membership from 24 to 36 to facilitate the establishment of a panel; and (c) to ensure that its Secretary is not assigned to functions that could create a conflict of interest with his core duties. The first measure has been implemented, as described in paragraph 48 below. In addition, a plan to address the backlog has been developed. Since then, the backlog has been significantly decreased. Since the current membership terms of office of the Joint Appeals Board expire at the end of October, the second measure will be implemented in the context of the nomination of new members. The third measure has been fully implemented.

Annual meeting

44. In recommendation 16, OIOS recommended instructing the Under-Secretary-General for Management in New York and the Directors-General of the other headquarters duty stations to convene an annual meeting with the members of the local Joint Appeals Board and Joint Disciplinary Committee, officials acting for the respondent and the Panel of Counsel. A meeting involving the new members of the Joint Appeals Board/Joint Disciplinary Committee in New York was convened in October 2005. In 2006, the meeting in New York will be held in the context of the yearly training course organized by the Office of Human Resources Management which is referred to in paragraph 23 above.

45. With respect to the annual meeting at other headquarters duty stations, in Geneva the holding of such a meeting can only be concretized once the new members of the Joint Appeals Board/Joint Disciplinary Committee have taken up their mandate. However, the annual meeting will be discussed at the first plenary meeting of the newly established Joint Appeals Board/Joint Disciplinary Committee in October 2006 and will be organized according to the availability of the Director-General. In Vienna, following the appointment of the new members of the Joint Appeals Board/Joint Disciplinary Committee in January 2006, a meeting was held by the designated official of the Director-General of the United Nations Office at Vienna/United Nations Office on Drugs and Crime. In Nairobi, the new Director-General of the United Nations Office at Nairobi will be requested to convene such a meeting.

Electronic tracking systems

46. In recommendation 17, OIOS recommended instructing the four secretariats of the Joint Appeals Board to adopt a standardized electronic tracking system with sufficient information on expected deadlines and actual data in the appeals process. If established, the new tracking system should be able to provide all the information necessary for the regular monitoring of trends in the appeals process and be accessible to all parties concerned. In recommendation 18, it recommended developing a password-protected electronic system to allow staff to ascertain the status of their appeals.

47. The secretariat of the Joint Appeals Board/Joint Disciplinary Committee in New York has upgraded and expanded the scope of its appeals database, which now contains information on expected deadlines and other important data as a tracking device to better monitor the status of each appeal. The work is in progress to construct a similar database for disciplinary cases. The secretariat of the Joint Appeals Board in New York also maintains an Internet website at www.un.org/jab. Appellants and others who are interested can access it from around the world to obtain general information about the appeals process and basic information about the status of their appeals. For purposes of confidentiality, the website displays an appeal by number only and not by name.

48. The Joint Appeals Board in Geneva has its own tracking system which contains all necessary information concerning the status of each appeal. Lack of adequate capacity in the context of the budget for the biennium 2006-2007 however, has prevented the implementation of the recommendation pertaining to the development of a password-protected electronic system allowing staff to ascertain the status of their appeals. In Vienna, the secretariat of the Joint Appeals Board plans to upgrade and expand its existing tracking system to monitor cases once the Secretary (P-3) and the Administrative Assistant approved by the General Assembly are recruited. As recommended by OIOS, the new system will allow appellants to follow up their cases online. Finally, in Nairobi, an electronic tracking system with data on each appeal and on expected deadlines has been established. The new system allows staff to ascertain the status of their appeals through the use of a password-protected electronic system.

D. United Nations Administrative Tribunal

49. The General Assembly, in paragraph 36 of its resolution 59/283, endorsed the proposal of the Secretary-General to transfer the resources of the Tribunal from section 8, Legal affairs, of the proposed programme budget to section 1, Overall policymaking, direction and coordination. The transfer of the resources of the Administrative Tribunal was implemented on 1 January 2006.

50. The General Assembly requested the Secretary-General, in paragraph 37 of its resolution 59/283, to guarantee the immediate independence of the Tribunal, including through ensuring the provision of administrative and logistical services that are exclusive to the secretariat of the Tribunal. To comply with that request, the secretariat submitted a proposal to the Advisory Committee on Administrative and Budgetary Questions (see A/60/303) to establish a separate administrative office for the Tribunal, comprising one post for an Administrative Officer at the P-3 level and one General Service post for an Administrative Assistant to deal with financial and

personnel matters of the Tribunal secretariat and with the provision of logistical services and support to the Tribunal while it is in session. In its report on administration of justice in the secretariat, the Advisory Committee rejected this proposal (see A/60/7/Add.1). In accordance with the recommendation of the Advisory Committee, the Executive Office of the Office of the Secretary-General now provides the personnel services for the secretariat of the Tribunal.

51. The General Assembly, in paragraph 40 of its resolution 59/283, decided to amend article 3, paragraph 1, of the statute of the Tribunal with effect from 1 January 2006. This measure was implemented and as of 1 January 2006, the requirement in article 3, paragraph 1, of the statute of the Tribunal that members shall possess judicial or other relevant legal experience in the field of administrative law or its equivalent within their national jurisdiction was amended to read members shall possess judicial experience in the field of administrative law or its equivalent within their national jurisdiction. The amendment to article 3 will be applied to the election of the new members of the Tribunal. Pursuant to paragraph 42 of resolution 59/283, once all the members of the Tribunal meet the criteria of amended article 3 of the statute, the Secretary-General will submit proposals on their compensation.

52. The General Assembly, in paragraph 46 of its resolution 59/283, requested the Tribunal to review the rules, practices and procedures of similar tribunals with a view to enhancing effective management of caseloads. Since a similar exercise was being undertaken by the Administrative Tribunal of the Asian Development Bank, the Tribunal decided to await the outcome thereof before commencing its review of the rules, practices and procedures of similar tribunals. The Asian Development Bank review has recently been completed, and the Tribunal is now in a position to hold its own review, incorporating the relevant findings of the Bank's review.

IV. Conclusion

53. Although the present report sets out the situation with respect to the implementation of decisions and requests contained in resolution 59/283, the Secretary-General invites the General Assembly to note that the measures taken to strengthen the system of the administration of justice in the Secretariat may be subject to further change resulting from any decisions made by the General Assembly on the report of the Redesign Panel.